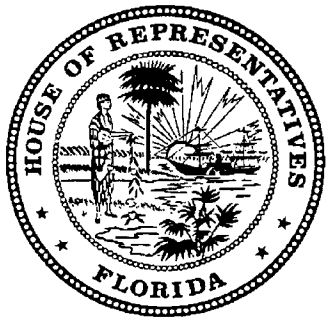
Committee on Environmental Regulation

Wednesday, April 5, 2006
1:30 – 3:00 PM
212 Knott

3rd REVISED

Allan G. Bense
Speaker

Mitch Needelman
Chair



AGENDA

Environmental Regulation Committee
April 5, 2006
1:30 p.m. – 3:00 p.m.
212 Knott

I. Call to Order/Roll Call

II. Opening Remarks

III. HB 1343 by Williams – relating to Environmental Protection

IV. HB 1359 by Benson – relating to Hazard Mitigation for Coastal Redevelopment

V. HB 701 CS by Justice – relating to Alternative Energy

VI. HB 313 by Allen – relating to the Regulation of Releases from Gambling Vessels

VII. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1343 Environmental Protection
SPONSOR(S): Williams
TIED BILLS: **IDEN./SIM. BILLS:** SB 2544

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee		Kliner	Kliner
2) Agriculture & Environment Appropriations Committee			
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

The bill proposes the acceleration of the distribution of funds to the Florida Forever program for fiscal years 2006-2007 and 2007-2008, allowing annual appropriations to increase from $300 million to $600 million. The annual debt service limit is lifted for Florida Forever bonds from $30 million to $60 million. This increases the amount of proceeds from the excise tax of documents distributed to the Land Acquisition Trust Fund to pay debt service.

The bill authorizes The Florida Department of Environmental Protection (DEP) to implement a state programmatic general permit (SPGP) for activities affecting up to 10 acres, if the Army Corps of Engineers (COE) agrees. The bill provides that an applicant in the Northwest Florida Water Management District may seek to use the SPGP authorized by this subsection and, for the limited purposes of implementing the statewide programmatic general permit authorized by this section, the department may apply its permitting criteria and authority to the regulation of isolated wetlands.

The bill offers a conditional ratification of the state's vegetative index for wetlands delineation.

Fiscal Impact: If the proposed $300 million increase in appropriation for the Florida Forever program is bonded for fiscal years 2006-2007 and 2007-2008, and bonds are sold at the earliest possibility for the 1st year (FY 06/07) the debt service would be 27.2 million. For the FY 07/08 –FY 25/26 it would be 54.5 million per year, then would drop back to 27.2 million in FY 26/27.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill provides that if DEP gets the 10-acre SPGP then the DEP would use the "higher" of the state/federal wetland delineation line and use United States Department of Agriculture, Natural Resource Conservation Service's National Cooperative Soil Survey data. DEP staff will be responsible for knowing both lines in each circumstance.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

- **Florida Forever**

The Florida Forever Program is the successor land acquisition program to Preservation 2000.[1] The Florida Forever Program authorizes the issuance of $3 billion in bond proceeds over a 10 year period for acquisition of land and water areas, and for restoration, conservation, recreation, and water resource development purposes. The first series of Florida Forever bonds was issued in 2001. Debt service for the first series of Florida Forever bonds was capped at $30 million, with annual incremental increases of $30 million up to a total of $300 million. Debt service for each bond issue must be appropriated by the Legislature annually, and like the Preservation 2000 Program, documentary stamp tax revenues are used to pay off the bond debt.

Like P2000, bond proceeds are distributed to the Department of Environmental Protection, the five water management districts, the Department of Agriculture, the Fish & Wildlife Conservation Commission, and the Department of Community Affairs. To date, three series of Florida Forever bonds have been authorized. The Florida Forever program appropriation has been $300 million with a $30 million per year debt service limitation.

- **Federal Dredge and Fill Regulation**:

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), regulates virtually all work in, over, and under waters listed as "Navigable Waters of the United States". Navigable Waters of the United States are those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used, or have been used in the past or may be susceptible to use to transport interstate or foreign commerce. These are waters that are navigable in the traditional sense where permits are required for certain activities pursuant to Section 10 of the Rivers and Harbors Act. Some typical examples of projects requiring Section 10 permits include beach nourishment, boat ramps, breakwaters, dredging, filling, or discharging material, groins and jetties, mooring buoys, piers, placement of rock riprap for wave protection or stream bank stabilization, boat hoists pilings, and construction of marina facilities.

In conjunction with Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act is the federal act which governs activities in wetlands and regulates the discharge of "dredged or fill" material into the "Waters of the United States" and is intended to minimize adverse impacts by preventing the unnecessary loss of wetlands and other sensitive aquatic areas. Waters of the United States is a broader term than Navigable Waters of the United States. Included are adjacent wetlands and

[1] The Preservation 2000 Program, created in 1990, was a 10-year, $3 billion land acquisition program, funded through the annual issuance of $300 million in bonds.

tributaries to Navigable Waters of the United States. These are the waters where permits are required for the discharge of dredge or fill material pursuant to Section 404 of the Clean Water Act.

The Corps of Engineers is responsible for regulating activities by others in navigable waterways through the granting of permits since passage of the Rivers & Harbors Act of 1899. Passage of the Clean Water Act in 1972 greatly broadened their role by giving the Corps of Engineers authority over "dredging and filling" in the waters of the United States, including many wetlands.

There are two types of Section 404 permits issued by the Corps of Engineers, individual and general permits. Activities in wetlands that involve more than minimal impacts require an individual permit. Within Section 404 general permits, there are two types of general permits, regional permits and nationwide permits. In both cases, these types of permits are issued when the proposed activities are minor in scope with minimal projected impacts.

- **State of Florida Dredge and Fill Regulation**

The DEP is the state agency which regulates "dredging and filling" activities in wetlands and other surface waters in order to protect the environment. In addition to DEP, "dredging and filling" is also regulated by the Corps of Engineers, the Florida Water Management Districts, counties and municipalities.

The term "filling" includes the placement or depositing of any material that is placed in wetlands or other surface waters. Dirt, sand, gravel, rocks, shell, pilings, and concrete are all considered fill if placed in wetlands. The term "dredging" refers to any type of excavation conducted in wetlands or other surface waters. Dredging includes digging, pulling up vegetation by the roots, leaving vehicular ruts, or any other activity that disturbs the soil.

Alteration of wetlands and other surface waters may have a detrimental impact on the environment. Such impacts can extend beyond the limits of the work site, affecting other public or private property. Polluted waters can be conveyed off-site through connecting waterbodies. The elimination or degradation of wetlands causes a reduction of beneficial functions provided by the wetlands.

The DEP, Environmental Resource Permit Program, regulates activities involving the alteration of surface water flows. This includes new activities in uplands that generate stormwater runoff from upland construction, as well as "dredging and filling" in wetlands and other surface waters. Environmental Resource Permit applications are processed by either DEP or one of the state's water management districts, in accordance with the division of responsibilities specified in operating agreements between DEP and the water management districts. The Environmental Resource Permit Program is in effect throughout the State except for the Florida panhandle (within the limits of the NWFWMD). Statutory language regarding the current division of regulatory responsibilities of DEP and the NWFWMD for management and storage of surface waters, dredge and fill, and stormwater activities is scheduled to be repealed July 1, 2010.

DEP and the Corps of Engineers have streamlined processing of state and federal regulatory permits under a state programmatic general permit. The state programmatic general permit avoids duplication of permitting between the Corps of Engineers and DEP for minor works located in waters of the U.S., including navigable waters. The state programmatic general permit allows DEP to approve the applicable federal permit during the review of an environmental resource permit for certain minor activities including shoreline stabilization, boat ramps, docks and piers, and maintenance dredging, as well as for activities that qualify for regulatory exemptions and general permits, subject to conditions.

In the 2005 Legislative Session, s. 373.4143 was created directing DEP to develop a strategy for consolidating or streamlining the state and federal programs to the extent possible. DEP developed the strategy, identified the problems, and made a number of recommendations which were submitted in a formal report to the legislature and the Governor's Office.

- **Wetland Delineation Rules**

Federal wetland boundaries are delineated (a.k.a. drawn) under the Federal Clean Water Act and other Federal statutes utilizing the U.S. Army Corps of Engineers 1987 wetland delineation manual adopted under the oversight of Environmental Protection Agency. The State of Florida and its political subdivisions delineate wetland boundaries under the provisions of ch. 62-340, F.A.C., as ratified by the Florida Legislature in sections 373.421 and .4211, F.S.

As a practical matter for most projects use of the Federal and State methods results in similar wetland boundaries. However, the Federal plant list shows slash pine and galberry as wetland indicator plants while the State plant list shows these two plants as upland indicators. Some biologists believe these species should be "neutral" (e.g. not indicate wetlands or uplands). In addition, the State methodology relies on the Federal Natural Resources Conservation Service (formerly Soil Conservation Service) soils manual while the Federal methodology does not in certain circumstances (ex. the use of "high organics" in the surface horizon to indicate wetlands). As a result a strict application of the Federal methodology delineates the wetland boundary "higher" in some pine flatwoods and improved pasture than does the State methodology.

Effects of Proposed Changes

The bill proposes the acceleration of the distribution of funds to the Florida Forever program for fiscal years 2006-2007 and 2007-2008, allowing annual appropriations to increase from $300 million to $600 million. The annual debt service limit is lifted for Florida Forever bonds from $30 million to $60 million. This increases the amount of proceeds from the excise tax of documents distributed to the Land Acquisition Trust Fund to pay debt service.

The bill authorizes DEP to implement a state programmatic general permit (SPGP) for activities affecting up to 10 acres, if the Army Corps of Engineers (COE) agrees. The bill provides that if DEP gets the 10-acre SPGP then the DEP would use the "higher" of the state/federal wetland delineation line and use United States Department of Agriculture, Natural Resource Conservation Service's National Cooperative Soil Survey data.[2] DEP staff will be responsible for knowing both lines in each circumstance. The section also states that the COE may apply federal conditions to the SPGP.[3] The bill also states that, for the purposes of the SPGP in NW Florida, DEP may regulate isolated wetlands.[4]

The bill offers a conditional ratification of the state's vegetative index for wetlands delineation. According to comments provided by DEP, this rule was recently endorsed by the Environmental Regulation Commission.[5] The bill would only ratify the wetland delineation vegetative index rule change in the context of the "new" SPGP from Section 4 and only if it's "no less than 5 acres..." DEP's position is that the change to the vegetative index needs to be ratified directly.

C. SECTION DIRECTORY:

Section 1. Provides express legislative intent language increasing the Florida Forever program appropriation during fiscal years 2006-2007 and 2007-2008 from $300 million to $600 million, and lifting the annual limit on debt service for Florida Forever bonds.

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[2] http://soils.usda.gov/

[3] According to the DEP, the COE would not need authorization in Florida Statutes in order to apply those conditions.

[4] This section will need to be considered if legislation is passed separately that implements ERPin NW Florida. DEP believes that if the DEP is to have the authority to regulate isolated wetlands, it should be unconditional, not limited to SPGP circumstances.

[5] The ERC is created under Section 20.255(7), Florida Statutes (F.S.). Commission membership is comprised of "seven residents of this state appointed by the Governor, subject to confirmation by the Senate." Members are selected from various sections of the state and are "representative of agriculture, the development industry, local government, the environmental community, lay citizens, and members of the scientific and technical community who have substantial expertise in the areas of the fate and transport of water pollutants, toxicology, epidemiology, geology, biology, environmental sciences, or engineering." The power and duties of the ERC are established in Section 403.804, F.S. The ERC is the standard setting authority for the Department.

Section 2. Amends paragraph (1) of subsection (1) of section 201.15, F.S., increasing the limitation on the amount transferred to the Land Acquisition Trust Fund from excise tax revenue to support the debt service increase from $30 million to $60 million per year for fiscal years 2006-2007 and 2007-2008.

Section 3. Amends paragraph (a) of subsection (1) of section 201.15, F.S., as amended by section 1 of Chapter 2005-92, Law of Florida, effective July 1, 2007, to increase the limitation on the amount transferred by an additional $60 million instead of $30 million each subsequent year fiscal year.

Section 4. Amends subsection (1) of section 373.4144, F.S., authorizing DEP to implement a State Programmatic General Permit (SPGP) for activities affecting up to 10 acres, if the Army Corps of Engineers (COE) agrees. The bill provides that an applicant in the Northwest Florida Water Management District may seek to use the SPGP authorized by this subsection and, for the limited purposes of implementing the statewide programmatic general permit authorized by this section, the department may apply its permitting criteria and authority to the regulation of isolated wetlands.

Section 5. Amends subsection (19) of section 373.4211, F.S., conditionally ratifying the wetland delineation vegetative index rule changes (gallberry, slash pine) in rule 62-340, F.A.C.

Section 6. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures:

   If the proposed $300 million increase in appropriation for the Florida Forever program is bonded for fiscal years 2006-2007 and 2007-2008, and bonds are sold at the earliest possibility for the 1st year (FY 06/07) the debt service would be 27.2 million. For the FY 07/08 –FY 25/26 it would be 54.5 million per year, then would drop back to 27.2 million in FY 26/27.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DEP to implement a State Programmatic General Permit (SPGP) for activities affecting up to 10 acres, if the Army Corps of Engineers (COE) agrees.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DEP Comments:

With regard to the vegetative index used for wetland delineation that is dealt with in section 5 of this bill, the bill's approach is not among the recommendations developed by DEP in response to direction in HB 0759 last year. The bill's approach may, in fact, exacerbate the problem because it is only a conditional ratification of that index and the DEP needs to have something solid in this respect in order to attempt to consolidate the federal and state delineation methods.

If this bill passes, for fiscal years 2006-2007 and 2007-2008 the Florida Forever program appropriation could increase from $300 million to $600. The annual limitation on debt service for the Florida Forever program bonds will be lifted. The amount of proceeds from the excise tax of documents distributed to the Land Acquisition Trust Fund will be increased from $30 million to $60 million each year.

It should also be noted that the degree to which doubling the Florida Forever appropriation enables the state to accelerate the actual acquisition of properties will depend upon the extent to which recipient state agencies are able to actually utilize the additional funding. A $300 million increase in appropriations will not necessarily translate into a doubling of annual acquisitions.

Section 201.15 (1) (a) provides in part "no series of bonds may issued pursuant to this paragraph unless such bonds are approved and the debt service for the remainder of the fiscal year in which the bonds are issued is specifically appropriated in the General Appropriations Act (GAA)". As such, the debt service required to support the increase in Florida Forever funding authorized in this bill, would be contingent upon appropriation in the GAA.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

A bill to be entitled

An act relating to environmental protection; providing legislative intent regarding funding for the Florida Forever program; amending s. 201.15, F.S.; revising provisions governing distribution of a portion of the proceeds of the excise tax on documents to the Land Acquisition Trust Fund; amending s. 373.4144, F.S.; removing provisions requiring the Department of Environmental Protection to develop a mechanism consolidating federal and state wetland permitting programs; authorizing implementation of a statewide programmatic general permit by the department and each water management district for certain dredge and fill activities; specifying conditions applicable to such permit; providing for use of such general permit within the Northwest Florida Water Management District; amending s. 373.4211, F.S.; revising provisions concerning the vegetative index used to delineate the landward extent of wetlands and surface waters; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The Legislature finds that rising land costs have reduced the effectiveness of the Florida Forever program. It is therefore the intent of the Legislature that the distribution of funds to the Florida Forever program be accelerated in order to complete the appropriations anticipated under s. 215.618, Florida Statutes, by the 2007-2008 fiscal year

by lifting the annual limit on debt service for Florida Forever bonds and allowing appropriations for the Florida Forever program to rise to $600 million in the 2006-2007 and 2007-2008 fiscal years.

Section 2. Paragraph (a) of subsection (1) of section 201.15, Florida Statutes, is amended to read:

201.15 Distribution of taxes collected.--All taxes collected under this chapter shall be distributed as follows and shall be subject to the service charge imposed in s. 215.20(1), except that such service charge shall not be levied against any portion of taxes pledged to debt service on bonds to the extent that the amount of the service charge is required to pay any amounts relating to the bonds:

(1) Sixty-two and sixty-three hundredths percent of the remaining taxes collected under this chapter shall be used for the following purposes:

(a) Amounts as shall be necessary to pay the debt service on, or fund debt service reserve funds, rebate obligations, or other amounts payable with respect to Preservation 2000 bonds issued pursuant to s. 375.051 and Florida Forever bonds issued pursuant to s. 215.618, shall be paid into the State Treasury to the credit of the Land Acquisition Trust Fund to be used for such purposes. The amount transferred to the Land Acquisition Trust Fund for such purposes shall not exceed $300 million in fiscal year 1999-2000 and thereafter for Preservation 2000 bonds and bonds issued to refund Preservation 2000 bonds, and $300 million in fiscal year 2000-2001 and thereafter for Florida Forever bonds. The annual amount transferred to the Land

Acquisition Trust Fund for Florida Forever bonds shall not exceed $30 million in the first fiscal year in which bonds are issued. The limitation on the amount transferred shall be increased by an additional $30 million in each ~~subsequent~~ fiscal year through 2004-2005, and by $60 million in each subsequent fiscal year, but shall not exceed a total of $300 million in any fiscal year for all bonds issued. It is the intent of the Legislature that all bonds issued to fund the Florida Forever Act be retired by December 31, 2030. Except for bonds issued to refund previously issued bonds, no series of bonds may be issued pursuant to this paragraph unless such bonds are approved and the debt service for the remainder of the fiscal year in which the bonds are issued is specifically appropriated in the General Appropriations Act. For purposes of refunding Preservation 2000 bonds, amounts designated within this section for Preservation 2000 and Florida Forever bonds may be transferred between the two programs to the extent provided for in the documents authorizing the issuance of the bonds. The Preservation 2000 bonds and Florida Forever bonds shall be equally and ratably secured by moneys distributable to the Land Acquisition Trust Fund pursuant to this section, except to the extent specifically provided otherwise by the documents authorizing the issuance of the bonds. No moneys transferred to the Land Acquisition Trust Fund pursuant to this paragraph, or earnings thereon, shall be used or made available to pay debt service on the Save Our Coast revenue bonds.

Section 3. Effective July 1, 2007, paragraph (a) of subsection (1) of section 201.15, Florida Statutes, as amended

by section 1 of chapter 2005-92, Laws of Florida, is amended to read:

201.15 Distribution of taxes collected.--All taxes collected under this chapter shall be distributed as follows and shall be subject to the service charge imposed in s. 215.20(1), except that such service charge shall not be levied against any portion of taxes pledged to debt service on bonds to the extent that the amount of the service charge is required to pay any amounts relating to the bonds:

(1) Sixty-two and sixty-three hundredths percent of the remaining taxes collected under this chapter shall be used for the following purposes:

(a) Amounts as shall be necessary to pay the debt service on, or fund debt service reserve funds, rebate obligations, or other amounts payable with respect to Preservation 2000 bonds issued pursuant to s. 375.051 and Florida Forever bonds issued pursuant to s. 215.618, shall be paid into the State Treasury to the credit of the Land Acquisition Trust Fund to be used for such purposes. The amount transferred to the Land Acquisition Trust Fund shall not exceed $300 million in fiscal year 1999-2000 and thereafter for Preservation 2000 bonds and bonds issued to refund Preservation 2000 bonds, and $300 million in fiscal year 2000-2001 and thereafter for Florida Forever bonds. The annual amount transferred to the Land Acquisition Trust Fund for Florida Forever bonds shall not exceed $30 million in the first fiscal year in which bonds are issued. The limitation on the amount transferred shall be increased by an additional $60 ~~$30~~ million in each subsequent fiscal year, but shall not exceed a

total of $300 million in any fiscal year for all bonds issued. It is the intent of the Legislature that all bonds issued to fund the Florida Forever Act be retired by December 31, 2030. Except for bonds issued to refund previously issued bonds, no series of bonds may be issued pursuant to this paragraph unless such bonds are approved and the debt service for the remainder of the fiscal year in which the bonds are issued is specifically appropriated in the General Appropriations Act. For purposes of refunding Preservation 2000 bonds, amounts designated within this section for Preservation 2000 and Florida Forever bonds may be transferred between the two programs to the extent provided for in the documents authorizing the issuance of the bonds. The Preservation 2000 bonds and Florida Forever bonds shall be equally and ratably secured by moneys distributable to the Land Acquisition Trust Fund pursuant to this section, except to the extent specifically provided otherwise by the documents authorizing the issuance of the bonds. No moneys transferred to the Land Acquisition Trust Fund pursuant to this paragraph, or earnings thereon, shall be used or made available to pay debt service on the Save Our Coast revenue bonds.

Section 4. Subsection (1) of section 373.4144, Florida Statutes, is amended to read:

373.4144 Federal environmental permitting.--

(1) In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts may implement a statewide programmatic general permit for any dredge and fill activity impacting 10 acres or less of wetlands or waters, including navigable waters, subject to

agreement with the United States Army Corps of Engineers in accordance with the following conditions:

(a) An applicant who seeks to use the statewide programmatic general permit authorized by this subsection is consenting to the department or district applying the landward-most delineation of wetland jurisdiction applicable pursuant to this part or the regulations implementing s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899. In implementing the 1987 Corps of Engineers Wetlands Manual Technical Report (Y 87-1), the department or district shall equate high organic matter in the surface horizon in accordance with the criteria for hydric soils of the National Resource Conservation Service. The department shall ensure statewide coordination and consistency in the delineation of surface waters and wetlands pursuant to the statewide programmatic general permit authorized by this part, by providing training and guidance to department staff and to the districts in implementing such permit.

(b) An applicant who seeks to use the statewide programmatic general permit authorized by this subsection may be subject to applicable substantive federal wetland regulatory criteria, which are not included pursuant to this part but which are authorized by the regulation implementing s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899.

(c) Notwithstanding s. 373.4145, an applicant in the Northwest Florida Water Management District may seek to use the

statewide programmatic general permit authorized by this subsection and, for the limited purposes of implementing the statewide programmatic general permit authorized by this section, the department may apply its permitting criteria and authority to the regulation of isolated wetlands ~~The department is directed to develop, on or before October 1, 2005, a mechanism or plan to consolidate, to the maximum extent practicable, the federal and state wetland permitting programs. It is the intent of the Legislature that all dredge and fill activities impacting 10 acres or less of wetlands or waters, including navigable waters, be processed by the state as part of the environmental resource permitting program implemented by the department and the water management districts. The resulting mechanism or plan shall analyze and propose the development of an expanded state programmatic general permit program in conjunction with the United States Army Corps of Engineers pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899. Alternatively, or in combination with an expanded state programmatic general permit, the mechanism or plan may propose the creation of a series of regional general permits issued by the United States Army Corps of Engineers pursuant to the referenced statutes. All of the regional general permits must be administered by the department or the water management districts or their designees~~.

Section 5. Subsection (19) of section 373.4211, Florida Statutes, is amended to read:

373.4211 Ratification of chapter 17-340, Florida

Administrative Code, on the delineation of the landward extent of wetlands and surface waters.--Pursuant to s. 373.421, the Legislature ratifies chapter 17-340, Florida Administrative Code, approved on January 13, 1994, by the Environmental Regulation Commission, with the following changes:

(19)(a) Rule 17-340.450(3) is amended by adding, after the species list, the following language:

"Within Monroe County and the Key Largo portion of Dade County only, the following species shall be listed as facultative: Alternanthera paronychioides, Byrsonima lucida, Ernodea littoralis, Guapira discolor, Marnilkara bahamensis, Pisonis rotundata, Pithecellobium keyensis, Pithecellobium unquis-cati, Randia aculeata, Reynosia septentrionalis, and Thrinax radiata."

(b) If the statewide programmatic general permit authorized by s. 373.4144(1) is adopted and such permit covers dredge and fill activity that impacts no less than 5 acres of wetlands, 60 days after adoption of such general permit and notwithstanding the provisions of paragraph (a), the vegetative index used to identify and delineate wetlands is modified such that slash pine (pinus elliotti) and gallberry (Ilex glabral) are classified as facultative and thus added to the list in rule 62-340.450(3), Florida Administrative Code.

Section 6. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1359 Hazard Mitigation for Coastal Redevelopment
SPONSOR(S): Benson
TIED BILLS: **IDEN./SIM. BILLS:** SB 2216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee		Kliner	Kliner
2) Transportation & Economic Development Appropriations Committee			
3) State Resources Council			
4)			
5)			

SUMMARY ANALYSIS

The bill authorizes the Department of Environmental Protection (DEP) to revoke the authority for the emergency installation of a rigid coastal armoring structure by an agency, political subdivision, or municipality if such installation conflicts with certain public policies regarding adjacent properties, public access, or damage to vegetation or nesting turtle populations.

The bill also:

- Provides for the Division of Emergency Management to manage the update of regional hurricane evacuation studies.
- Prohibits the Department of Health from issuing a construction or repair permit for onsite sewage treatment and disposal systems located seaward of the coastal construction control line without receipt of a permit from the Department of Environmental Protection.
- Provides for the disclosure of a property's location in a hurricane evacuation zone prior to closing of a real property sale

Fiscal Impact: No impact on General Revenue. According to the DEP, there would be no fiscal impact on local governments that properly use their authority to install or authorize emergency armoring. Local governments that improperly authorize armoring could face enforcement penalties. More significantly, they would have to bear a share of the additional recovery and restoration costs associated with erosion exacerbated by improper armoring and the insurance issues and public infrastructure repair and replacement costs related to beach and dune damage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government. The bill authorizes the Department of Environmental Protection (DEP) to revoke the authority for the emergency installation of a rigid coastal armoring structure by an agency, political subdivision, or municipality if such installation conflicts with certain public policies regarding adjacent properties, public access, or damage to vegetation or nesting turtle populations.

The bill requires an extra procedural requirement by the Department of Health and the Department of Environmental Regulation regarding permitted work performed on on-site sewage systems seaward of the Coastal Construction Control Line.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Dune Armoring

Along with regulating construction along Florida's coastline, the DEP manages beach restoration projects to restore eroded shoreline in coordination with the federal and local governments. Subsequent maintenance of restored shorelines, referred to as nourishment, is also administered by the DEP.

The Coastal Construction Control Line Program (CCCL) purpose is protecting Florida's beaches and dunes while assuring reasonable use of private property. The Legislature initiated the CCCL Program to protect the coastal system from improperly sited and designed structures which can destabilize or destroy the beach and dune system. Once destabilized, the valuable natural resources are lost, as are its important values for recreation, upland property protection, and environmental habitat. Adoption of a coastal construction control line establishes an area of jurisdiction in which special site and design criteria are applied for construction and related activities. These standards may be more stringent than those already applied in the rest of the coastal building zone because of the greater forces expected to occur in the more seaward zone of the beach during a storm event.

Under emergency conditions, local governments may authorize temporary armoring to immediately protect public and private infrastructure like homes, utilities and roads if those structures are threatened. In order to consider the armoring permanent, the property owner must submit a complete (CCCL) permit application to the DEP within 60 days of installing the armoring. Otherwise, the property owner must remove the temporary armoring structure.

The DEP permits the installation of "dune stabilization or restoration structures" and "beach stabilization or regeneration structures" only in limited circumstances and as temporary systems in order to evaluate (1) the structure's effectiveness, (2) the structure's effect on adjacent properties, and (3) the structure's environmental impact on the beach and dune system. If erosion occurs as a result of a storm event which threatens private structures or public infrastructure, the DEP, a municipality, or another political

subdivision may install or have installed rigid coastal armoring structures so long as the following measures are considered with the emergency armoring:

- Protection of the beach-dune system.
- Siting and design criteria for the protective structure
- Impacts on adjacent structures
- Preservation of public beach access
- Protection of native coastal vegetation and nesting marine turtles and their hatchlings.

Onsite Sewage Treatment and Disposal Systems

According to the Florida Department of Health, 31 percent of the population is served by estimated 2.3 million onsite sewage treatment and disposal systems (OSTDS). These systems discharge over 426 million gallons of treated effluent per day into the subsurface soil environment. [1]

Onsite sewage treatment and disposal systems are facilities constructed on individual sites used to provide wastewater disposal. Such systems usually consist of a septic tank and a subsurface infiltration system. Within the septic tank, sedimentation and some anaerobic digestion of solids occur. Septic tanks contain bacteria that grow best in oxygen-poor conditions. These bacteria carry out a portion of the treatment process by converting most solids into liquids and gases. Bacteria that require oxygen thrive in the drainfield and complete the treatment process begun in the septic tank. If the septic tank is working well, the remaining partially treated wastewater, referred to as septic tank effluent, which flows out of the tank may be relatively clear, although it still has an odor and may carry disease organisms. [2]

Section 381.0065, F.S., states the intent of the Legislature that where a publicly owned or Investor owned sewerage system is not available, the Department of Health (DOH) shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems. The section requires that a person may not perform any of these actions without first obtaining a permit from the department. In issuing onsite system (septic tank) permits, the DOH has no statute or rule that specifically addresses designated coastal high hazard areas or DEP-established coastal construction control lines (CCCL), both of which are established to protect Florida's coastal system and coastal infrastructure and private property. Section 381.0065(4), F.S., states that DOH "shall not make the issuance of such [septic tank] permits contingent upon prior approval" by DEP. Because DOH has no authority to enforce DEP's statutes or rules about location of facilities in the coastal zone and has no authority of its own in this regard, onsite systems are often permitted seaward of structures, where they are most vulnerable to damage from storm surges.

Coastal High Hazard Study Committee

On September 7, 2005, the Governor issued Executive Order 05-178, appointing members to the Coastal High Hazard Study Committee, which was charged with studying and formulating recommendations for managing growth in Coastal High Hazard Areas, defined as the Category 1 hurricane evacuation zones. The Committee was appointed to evaluate and make recommendations to resolve problems exposed by the extraordinary hurricane seasons in 2004 and 2005.

As discussed below under the heading Effects of Proposed Changes, the bill reflects recommendations included in the Coastal High Hazard Study Committee's February 1, 2006 final report. Section 1 of the bill gives the Department of Environmental Protection (DEP) the power to revoke local authority to install or authorize installation of emergency coastal armoring structures when the local entity improperly exercises that authority and causes harm to the coastal system. Section 3 of the bill makes the issuance of a Department of Health (DOH) onsite system permit seaward of the DEP-established coastal construction control line (CCCL) contingent on issuance of a DEP CCCL permit.

[1] http://www.doh.state.fl.us/environment/ostds/intro.htm
[2] http://www.doh.state.fl.us/environment/OSTDS/pdfiles/forms/brochure.pdf

Regional Hurricane Evacuation Studies

Section 252.35, F.S., assigns responsibility to the Division of Emergency Management (DEM) to maintain a comprehensive statewide program of emergency management. The division is required to prepare a comprehensive emergency management plan that is operations oriented. The plan must include specific regional and interregional planning provisions and promote intergovernmental coordination of evacuation activities. The division has the capability to conduct regional hurricane evacuation studies. Such studies include a computerized model run by the National Hurricane Center to estimate storm surge depths and winds resulting from historical, hypothetical, or predicted hurricanes taking into account:

- Pressure
- Size
- Forward speed
- Track
- Winds

This model is known as SLOSH (Sea, Lake, and Overland Surges from Hurricanes). Calculations are applied to a specific locale's shoreline, incorporating the unique bay and river configurations, water depths, bridges, roads, and other physical features to estimate storm surge.[3]

Another model utilized by the Division is The Arbiter of Storms model or TAOS. The TAOS model is an integrated hazards model that provides data at a higher resolution than the SLOSH model does for surge. According to DEM, the TAOS model enhances the local government's ability to do effective hazard mitigation planning. Currently, SLOSH model storm surge calculations are not available at the same resolution statewide, or in a standard Geographical Information System (GIS) format. The TAOS model can perform calculations of storm hazard risk for the entire state at one time, and the results are available for addition to the GIS data base.

The SLOSH model calculates storm surge for an area of coastline called a basin. In order to provide complete coverage for the state's coastline, 11 separate SLOSH basins and models must be created and run. Unlike the SLOSH model which only calculates for storm surge, the TAOS model will also calculate an estimate of storm surge, wave height, maximum winds, inland flooding, debris and structural damage for the entire state at once. Furthermore, the model resolution for TAOS with respect to underwater and on-land data is much finer than for the SLOSH model. No computer model is perfectly accurate and calculations of storm surge from both TAOS and SLOSH contain some degree of uncertainty.[4]

Periodic hurricane evacuation studies are required because of changing population dynamics. Populations and the existing transportation network define the speed with which an evacuation may be conducted. Regional hurricane evacuation studies are able to determine recommended timing intervals used to control a sequenced evacuation by locality.

Real Property Sales Disclosures

Many conditions are subject to disclosure to a buyer of real property during a sale, including defects to property or appliance, natural hazards such as flood, inundation and severe fire hazard zones, lead paint, military ordnance, known hazardous substances on the property, and neighborhood environmental contamination. Florida Statutes require disclosure of such items as association

[3] http://www.nhc.noaa.gov/HAW2/english/surge/slosh_printer.shtml and http://www.floridadisaster.org/hurricane_aware/english/surge/x_slosh.htm

[4] http://www.floridadisaster.org/brm/lms/faq_taosslosh.htm

membership requirements,[5] and *ad valorem* taxes.[6] Florida, however, does not currently require disclosure of a property's location within a hurricane evacuation zone prior to a sales transaction.

Effects of Proposed Changes

The bill authorizes the Department of Environmental Protection (DEP) to revoke the authority for the emergency installation of a rigid coastal armoring structure by an agency, political subdivision, or municipality if such installation conflicts with certain public policies regarding adjacent properties, public access, or damage to vegetation or nesting turtle populations.

The bill also:

- Provides for the Division of Emergency Management to manage the update of regional hurricane evacuation studies.
- Prohibits the Department of Health from issuing a construction or repair permit for onsite sewage treatment and disposal systems located seaward of the coastal construction control line without receipt of a permit from the Department of Environmental Protection.
- Provides for the disclosure of a property's location in a hurricane evacuation zone prior to closing of a real property sale

C. SECTION DIRECTORY:

Section 1. Amends subsection (3) of s. 161.085, F.S., providing that unless authority has been revoked by the DEP, an agency, political subdivision, or municipality having jurisdiction over the impacted area may install or authorize installation of a rigid coastal armoring structure. The DEP may revoke such authority if the DEP determines that the structure harms or interferes with the protection of the beach-dune system, adversely impacts adjacent properties, interferes with public beach access, or harms native coastal vegetation or nesting marine turtles or their hatchlings.

Section 2. Amends paragraph (h) of subsection (2) of section 163.3178, F.S., to direct the Division of Emergency Management to manage the update of regional hurricane evacuation studies. Such studies shall be done in a consistent manner and using the methodology for modeling storm surge that is used by the National Hurricane Center.

Section 3. Amends subsection (4) of section 381.0065, F.S., to require the Department of Health to be in receipt of a coastal construction control line permit issued by the Department of Environmental Protection before issuing a permit for work on an onsite sewage treatment and disposal system seaward of the coastal construction control line.

Section 4. Creates s. 689.264, F.S., requiring a disclosure that real property is located in a hurricane evacuation zone be presented to a prospective purchaser of said real property at or before execution of a sale contract. Unless a substantially similar disclosure summary is included in the contract, a separate summary must be attached to the contract for sale. The bill provides a sample format for the disclosure summary. The sample format discloses:

- All or a portion of the property lies within a specifically identified hurricane evacuation zone
- This designation may require occupants to evacuate the property during an impending tropical storm or hurricane event.
- The purchaser is advised to verify the hurricane zone evacuation designation at the start of every hurricane season through the county emergency management agency.

[5] s. 720.401, F.S

[6] s. 689.261, F.S.

The sale contract must include, "in prominent language", a statement that the potential purchaser should not execute the contract until he or she has read the disclosure summary.

Section 5. The bill provides for an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Dune armoring: According to the DEP, the fiscal impact is indeterminate yet probably neutral overall. The legislation would save DEP staff resources and money expended on fixing the damage caused by improperly installed emergency armoring. Such armoring increases beach erosion and damages the beach and dune system, increasing the cost of restoration and recovery projects. The cost savings is impossible to estimate with any accuracy as the costs of beach recovery and restoration projects vary greatly depending on site-specific circumstances.

   As written, the DOH reports no fiscal impact to the agency.

   Hurricane studies: The Division of Emergency Management currently conducts the type of studies required by this bill. Such studies are usually funded through federal sources and recurring state funding is not usually provided.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   According to the DEP, there would be no fiscal impact on local governments that properly use their authority to install or authorize emergency armoring. Local governments that improperly authorize armoring could face enforcement penalties. More significantly, they would have to bear a share of the additional recovery and restoration costs associated with erosion exacerbated by improper armoring and the insurance issues and public infrastructure repair and replacement costs related to beach and dune damage.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Improved assurance of proper coastal armoring will save private property by preventing coastal erosion, likely saving insurance as well as property repair and replacement costs. These savings could be substantial but are indeterminate.

An owner of an onsite sewage system seaward of the coastal construction control line may pay more for work performed on the system due to additional permitting required under the bill. However, savings would also accrue to homeowners whose septic tanks are not washed away during storms because better consideration is given to proper siting.

The real estate industry will have another disclosure form to present to buyers of a home in a hurricane evacuation zone.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

A bill to be entitled

An act relating to hazard mitigation for coastal redevelopment; amending s. 161.085, F.S.; specifying entities that are authorized to install or authorize installation of rigid coastal armoring structures; authorizing the Department of Environmental Protection to revoke certain authority; amending s. 163.3178, F.S.; requiring the Division of Emergency Management to manage certain hurricane evacuation studies; requiring that such studies be performed in a specified manner; amending s. 381.0065, F.S.; requiring the issuance of certain permits by the Department of Health to be contingent upon the receipt of certain permits issued by the Department of Environmental Protection; creating s. 689.264, F.S.; requiring disclosure of property location within a hurricane evacuation zone to prospective purchaser; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 161.085, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

161.085 Rigid coastal armoring structures.--

(3) If erosion occurs as a result of a storm event which threatens private structures or public infrastructure and a permit has not been issued pursuant to subsection (2), unless the authority has been revoked by order of the department

pursuant to subsection (8), an ~~the~~ agency, political subdivision, or municipality having jurisdiction over the impacted area may install or authorize installation of rigid coastal armoring structures for the protection of private structures or public infrastructure, or take other measures to relieve the threat to private structures or public infrastructure as long as the following items are considered and incorporated into such emergency measures:

(a) Protection of the beach-dune system.

(b) Siting and design criteria for the protective structure.

(c) Impacts on adjacent properties.

(d) Preservation of public beach access.

(e) Protection of native coastal vegetation and nesting marine turtles and their hatchlings.

(8) If an agency, political subdivision, or municipality installs or authorizes installation of a rigid coastal armoring structure that does not comply with subsection (3), and if the department determines that the action harms or interferes with the protection of the beach-dune system, adversely impacts adjacent properties, interferes with public beach access, or harms native coastal vegetation or nesting marine turtles or their hatchlings, the department may revoke by order the authority of the agency, political subdivision, or municipality under subsection (3) to install or authorize the installation of rigid coastal armoring structures.

Section 2. Paragraph (h) of subsection (2) of section 163.3178, Florida Statutes, is amended to read:

163.3178 Coastal management.--

(2) Each coastal management element required by s. 163.3177(6)(g) shall be based on studies, surveys, and data; be consistent with coastal resource plans prepared and adopted pursuant to general or special law; and contain:

(h) Designation of high-hazard coastal areas, which for uniformity and planning purposes herein, are defined as category 1 evacuation zones. Category 1 evacuation zones are based on the regional hurricane evacuation studies. The Division of Emergency Management is responsible for managing the update of the regional hurricane evacuation studies and ensuring that such studies are done in a consistent manner using the methodology for modeling storm surge that is used by the National Hurricane Center. ~~However,~~ Application of mitigation and redevelopment policies, pursuant to s. 380.27(2), and any rules adopted thereunder, shall be at the discretion of local government.

Section 3. Subsection (4) of section 381.0065, Florida Statutes, is amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.--

(4) PERMITS; INSTALLATION; AND CONDITIONS.--A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control

line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being

registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(a) Subdivisions and lots in which each lot has a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a water system regulated under s. 381.0062 and onsite sewage treatment and disposal systems, provided the projected daily sewage flow

does not exceed an average of 1,500 gallons per acre per day, and provided satisfactory drinking water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of this section and rules adopted under this section can be met.

(b) Subdivisions and lots using a public water system as defined in s. 403.852 may use onsite sewage treatment and disposal systems, provided there are no more than four lots per acre, provided the projected daily sewage flow does not exceed an average of 2,500 gallons per acre per day, and provided that all distance and setback, soil condition, water table elevation, and other related requirements that are generally applicable to the use of onsite sewage treatment and disposal systems are met.

(c) Notwithstanding the provisions of paragraphs (a) and (b), for subdivisions platted of record on or before October 1, 1991, when a developer or other appropriate entity has previously made or makes provisions, including financial assurances or other commitments, acceptable to the Department of Health, that a central water system will be installed by a regulated public utility based on a density formula, private potable wells may be used with onsite sewage treatment and disposal systems until the agreed-upon densities are reached. The department may consider assurances filed with the Department of Business and Professional Regulation under chapter 498 in determining the adequacy of the financial assurance required by this paragraph. In a subdivision regulated by this paragraph, the average daily sewage flow may not exceed 2,500 gallons per acre per day. This section does not affect the validity of

existing prior agreements. After October 1, 1991, the exception provided under this paragraph is not available to a developer or other appropriate entity.

(d) Paragraphs (a) and (b) do not apply to any proposed residential subdivision with more than 50 lots or to any proposed commercial subdivision with more than 5 lots where a publicly owned or investor-owned sewerage system is available. It is the intent of this paragraph not to allow development of additional proposed subdivisions in order to evade the requirements of this paragraph.

(e) Onsite sewage treatment and disposal systems must not be placed closer than:

1. Seventy-five feet from a private potable well.

2. Two hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of greater than 2,000 gallons per day.

3. One hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of less than or equal to 2,000 gallons per day.

4. Fifty feet from any nonpotable well.

5. Ten feet from any storm sewer pipe, to the maximum extent possible, but in no instance shall the setback be less than 5 feet.

6. Seventy-five feet from the mean high-water line of a tidally influenced surface water body.

7. Seventy-five feet from the mean annual flood line of a permanent nontidal surface water body.

8. Fifteen feet from the design high-water line of retention areas, detention areas, or swales designed to contain standing or flowing water for less than 72 hours after a rainfall or the design high-water level of normally dry drainage ditches or normally dry individual lot stormwater retention areas.

(f) Except as provided under paragraphs (e) and (t), no limitations shall be imposed by rule, relating to the distance between an onsite disposal system and any area that either permanently or temporarily has visible surface water.

(g) All provisions of this section and rules adopted under this section relating to soil condition, water table elevation, distance, and other setback requirements must be equally applied to all lots, with the following exceptions:

1. Any residential lot that was platted and recorded on or after January 1, 1972, or that is part of a residential subdivision that was approved by the appropriate permitting agency on or after January 1, 1972, and that was eligible for an onsite sewage treatment and disposal system construction permit on the date of such platting and recording or approval shall be eligible for an onsite sewage treatment and disposal system construction permit, regardless of when the application for a permit is made. If rules in effect at the time the permit application is filed cannot be met, residential lots platted and recorded or approved on or after January 1, 1972, shall, to the maximum extent possible, comply with the rules in effect at the time the permit application is filed. At a minimum, however, those residential lots platted and recorded or approved on or

after January 1, 1972, but before January 1, 1983, shall comply with those rules in effect on January 1, 1983, and those residential lots platted and recorded or approved on or after January 1, 1983, shall comply with those rules in effect at the time of such platting and recording or approval. In determining the maximum extent of compliance with current rules that is possible, the department shall allow structures and appurtenances thereto which were authorized at the time such lots were platted and recorded or approved.

2. Lots platted before 1972 are subject to a 50-foot minimum surface water setback and are not subject to lot size requirements. The projected daily flow for onsite sewage treatment and disposal systems for lots platted before 1972 may not exceed:

a. Two thousand five hundred gallons per acre per day for lots served by public water systems as defined in s. 403.852.

b. One thousand five hundred gallons per acre per day for lots served by water systems regulated under s. 381.0062.

(h)1. The department may grant variances in hardship cases which may be less restrictive than the provisions specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system construction permit, if the transferee files, within 60 days after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was

originally granted to the original applicant for the variance. There is no fee associated with the processing of this supplemental information. A variance may not be granted under this section until the department is satisfied that:

a. The hardship was not caused intentionally by the action of the applicant;

b. No reasonable alternative, taking into consideration factors such as cost, exists for the treatment of the sewage; and

c. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.

Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory, special consideration must be given to those lots platted before 1972.

2. The department shall appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full

use of their land where possible. The committee consists of the following:

a. The Division Director for Environmental Health of the department or his or her designee.

b. A representative from the county health departments.

c. A representative from the home building industry recommended by the Florida Home Builders Association.

d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.

e. A representative from the Department of Environmental Protection.

f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.

g. A representative from the engineering profession recommended by the Florida Engineering Society.

Members shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(i) A construction permit may not be issued for an onsite sewage treatment and disposal system in any area zoned or used for industrial or manufacturing purposes, or its equivalent, where a publicly owned or investor-owned sewage treatment system is available, or where a likelihood exists that the system will

receive toxic, hazardous, or industrial waste. An existing onsite sewage treatment and disposal system may be repaired if a publicly owned or investor-owned sewerage system is not available within 500 feet of the building sewer stub-out and if system construction and operation standards can be met. This paragraph does not require publicly owned or investor-owned sewerage treatment systems to accept anything other than domestic wastewater.

1. A building located in an area zoned or used for industrial or manufacturing purposes, or its equivalent, when such building is served by an onsite sewage treatment and disposal system, must not be occupied until the owner or tenant has obtained written approval from the department. The department shall not grant approval when the proposed use of the system is to dispose of toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals.

2. Each person who owns or operates a business or facility in an area zoned or used for industrial or manufacturing purposes, or its equivalent, or who owns or operates a business that has the potential to generate toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals, and uses an onsite sewage treatment and disposal system that is installed on or after July 5, 1989, must obtain an annual system operating permit from the department. A person who owns or operates a business that uses an onsite sewage treatment and disposal system that was installed and approved before July 5, 1989, need not obtain a system operating permit. However, upon change of ownership or tenancy, the new owner or operator must notify the

department of the change, and the new owner or operator must obtain an annual system operating permit, regardless of the date that the system was installed or approved.

3. The department shall periodically review and evaluate the continued use of onsite sewage treatment and disposal systems in areas zoned or used for industrial or manufacturing purposes, or its equivalent, and may require the collection and analyses of samples from within and around such systems. If the department finds that toxic or hazardous chemicals or toxic, hazardous, or industrial wastewater have been or are being disposed of through an onsite sewage treatment and disposal system, the department shall initiate enforcement actions against the owner or tenant to ensure adequate cleanup, treatment, and disposal.

(j) An onsite sewage treatment and disposal system for a single-family residence that is designed by a professional engineer registered in the state and certified by such engineer as complying with performance criteria adopted by the department must be approved by the department subject to the following:

1. The performance criteria applicable to engineer-designed systems must be limited to those necessary to ensure that such systems do not adversely affect the public health or significantly degrade the groundwater or surface water. Such performance criteria shall include consideration of the quality of system effluent, the proposed total sewage flow per acre, wastewater treatment capabilities of the natural or replaced soil, water quality classification of the potential surface-water-receiving body, and the structural and maintenance

viability of the system for the treatment of domestic wastewater. However, performance criteria shall address only the performance of a system and not a system's design.

2. The technical review and advisory panel shall assist the department in the development of performance criteria applicable to engineer-designed systems.

3. A person electing to utilize an engineer-designed system shall, upon completion of the system design, submit such design, certified by a registered professional engineer, to the county health department. The county health department may utilize an outside consultant to review the engineer-designed system, with the actual cost of such review to be borne by the applicant. Within 5 working days after receiving an engineer-designed system permit application, the county health department shall request additional information if the application is not complete. Within 15 working days after receiving a complete application for an engineer-designed system, the county health department either shall issue the permit or, if it determines that the system does not comply with the performance criteria, shall notify the applicant of that determination and refer the application to the department for a determination as to whether the system should be approved, disapproved, or approved with modification. The department engineer's determination shall prevail over the action of the county health department. The applicant shall be notified in writing of the department's determination and of the applicant's rights to pursue a variance or seek review under the provisions of chapter 120.

4. The owner of an engineer-designed performance-based system must maintain a current maintenance service agreement with a maintenance entity permitted by the department. The maintenance entity shall obtain a biennial system operating permit from the department for each system under service contract. The department shall inspect the system at least annually, or on such periodic basis as the fee collected permits, and may collect system-effluent samples if appropriate to determine compliance with the performance criteria. The fee for the biennial operating permit shall be collected beginning with the second year of system operation. The maintenance entity shall inspect each system at least twice each year and shall report quarterly to the department on the number of systems inspected and serviced.

5. If an engineer-designed system fails to properly function or fails to meet performance standards, the system shall be re-engineered, if necessary, to bring the system into compliance with the provisions of this section.

(k) An innovative system may be approved in conjunction with an engineer-designed site-specific system which is certified by the engineer to meet the performance-based criteria adopted by the department.

(l) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and which considers water table elevations, densities, and setback requirements. On lots where a setback

distance of 75 feet from surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for disposal of effluent from onsite sewage treatment and disposal systems.

(m) No product sold in the state for use in onsite sewage treatment and disposal systems may contain any substance in concentrations or amounts that would interfere with or prevent the successful operation of such system, or that would cause discharges from such systems to violate applicable water quality standards. The department shall publish criteria for products known or expected to meet the conditions of this paragraph. In the event a product does not meet such criteria, such product may be sold if the manufacturer satisfactorily demonstrates to the department that the conditions of this paragraph are met.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(i). The department shall accept evaluations submitted by professional engineers and such other persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the evaluation.

(o) The department shall appoint a research review and advisory committee, which shall meet at least semiannually. The committee shall advise the department on directions for new research, review and rank proposals for research contracts, and review draft research reports and make comments. The committee is comprised of:

1. A representative of the Division of Environmental Health of the Department of Health.

2. A representative from the septic tank industry.

3. A representative from the home building industry.

4. A representative from an environmental interest group.

5. A representative from the State University System, from a department knowledgeable about onsite sewage treatment and disposal systems.

6. A professional engineer registered in this state who has work experience in onsite sewage treatment and disposal systems.

7. A representative from the real estate profession.

8. A representative from the restaurant industry.

9. A consumer.

Members shall be appointed for a term of 3 years, with the appointments being staggered so that the terms of no more than four members expire in any one year. Members shall serve without remuneration, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061.

(p) An application for an onsite sewage treatment and disposal system permit shall be completed in full, signed by the

owner or the owner's authorized representative, or by a contractor licensed under chapter 489, and shall be accompanied by all required exhibits and fees. No specific documentation of property ownership shall be required as a prerequisite to the review of an application or the issuance of a permit. The issuance of a permit does not constitute determination by the department of property ownership.

(q) The department may not require any form of subdivision analysis of property by an owner, developer, or subdivider prior to submission of an application for an onsite sewage treatment and disposal system.

(r) Nothing in this section limits the power of a municipality or county to enforce other laws for the protection of the public health and safety.

(s) In the siting of onsite sewage treatment and disposal systems, including drainfields, shoulders, and slopes, guttering shall not be required on single-family residential dwelling units for systems located greater than 5 feet from the roof drip line of the house. If guttering is used on residential dwelling units, the downspouts shall be directed away from the drainfield.

(t) Notwithstanding the provisions of subparagraph (g)1., onsite sewage treatment and disposal systems located in floodways of the Suwannee and Aucilla Rivers must adhere to the following requirements:

1. The absorption surface of the drainfield shall not be subject to flooding based on 10-year flood elevations. Provided, however, for lots or parcels created by the subdivision of land

in accordance with applicable local government regulations prior to January 17, 1990, if an applicant cannot construct a drainfield system with the absorption surface of the drainfield at an elevation equal to or above 10-year flood elevation, the department shall issue a permit for an onsite sewage treatment and disposal system within the 10-year floodplain of rivers, streams, and other bodies of flowing water if all of the following criteria are met:

a. The lot is at least one-half acre in size;

b. The bottom of the drainfield is at least 36 inches above the 2-year flood elevation; and

c. The applicant installs either: a waterless, incinerating, or organic waste composting toilet and a graywater system and drainfield in accordance with department rules; an aerobic treatment unit and drainfield in accordance with department rules; a system approved by the State Health Office that is capable of reducing effluent nitrate by at least 50 percent; or a system approved by the county health department pursuant to department rule other than a system using alternative drainfield materials. The United States Department of Agriculture Soil Conservation Service soil maps, State of Florida Water Management District data, and Federal Emergency Management Agency Flood Insurance maps are resources that shall be used to identify flood-prone areas.

2. The use of fill or mounding to elevate a drainfield system out of the 10-year floodplain of rivers, streams, or other bodies of flowing water shall not be permitted if such a system lies within a regulatory floodway of the Suwannee and

Aucilla Rivers. In cases where the 10-year flood elevation does not coincide with the boundaries of the regulatory floodway, the regulatory floodway will be considered for the purposes of this subsection to extend at a minimum to the 10-year flood elevation.

(u) The owner of an aerobic treatment unit system shall maintain a current maintenance service agreement with an aerobic treatment unit maintenance entity permitted by the department. The maintenance entity shall obtain a system operating permit from the department for each aerobic treatment unit under service contract. The maintenance entity shall inspect each aerobic treatment unit system at least twice each year and shall report quarterly to the department on the number of aerobic treatment unit systems inspected and serviced. The owner shall allow the department to inspect during reasonable hours each aerobic treatment unit system at least annually, and such inspection may include collection and analysis of system-effluent samples for performance criteria established by rule of the department.

(v) The department may require the submission of detailed system construction plans that are prepared by a professional engineer registered in this state. The department shall establish by rule criteria for determining when such a submission is required.

Section 4. Section 689.264, Florida Statutes, is created to read:

689.264 Sale of real property; disclosure of property location in a hurricane evacuation zone to prospective purchaser.--

(1) A prospective purchaser of real property located in a hurricane evacuation zone must be presented a disclosure summary at or before execution of the contract for sale. Unless a substantially similar disclosure summary is included in the contract for sale, a separate disclosure summary must be attached to the contract for sale. The disclosure summary, whether separate or included in the contract, must be in a form substantially similar to the following:

PROPERTY IN HURRICANE EVACUATION ZONE
DISCLOSURE SUMMARY

ALL OR A PORTION OF THIS PROPERTY CURRENTLY LIES WITHIN THE CATEGORY (INSERT ZONE(S)) HURRICANE EVACUATION ZONE(S) DESIGNATED BY THE COUNTY EMERGENCY MANAGEMENT DEPARTMENT. THIS DESIGNATION MAY REQUIRE OCCUPANTS OF THE PROPERTY TO EVACUATE DURING AN IMPENDING TROPICAL STORM OR HURRICANE EVENT. AS THIS DESIGNATION IS SUBJECT TO CHANGE, YOU SHOULD VERIFY YOUR HURRICANE EVACUATION ZONE DESIGNATION PRIOR TO THE START OF EACH HURRICANE SEASON. IF YOU HAVE ANY QUESTIONS REGARDING THIS DISCLOSURE, CONTACT THE COUNTY EMERGENCY MANAGEMENT AGENCY FOR INFORMATION.

(2) Unless included in the contract, the disclosure summary must be provided by the seller. If the disclosure summary is not included in the contract for sale, the contract for sale must refer to and incorporate by reference the disclosure summary and include in prominent language a statement that the potential purchaser should not execute the contract until the disclosure summary required by this section has been read.

Section 5. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **1359**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Environmental Regulation Committee

Representative(s) Benson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (3) of section 161.085, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

161.085 Rigid coastal armoring structures.--

(3) If erosion occurs as a result of a storm event which threatens private structures or public infrastructure and a permit has not been issued pursuant to subsection (2), unless the authority has been revoked by order of the department pursuant to subsection (8), an ~~the~~ agency, political subdivision, or municipality having jurisdiction over the impacted area may install or authorize installation of rigid coastal armoring structures for the protection of private structures or public infrastructure, or take other measures to relieve the threat to private structures or public infrastructure as long as the following items are considered and incorporated into such emergency measures:

(a) Protection of the beach-dune system.

(b) Siting and design criteria for the protective structure.

(c) Impacts on adjacent properties.

(d) Preservation of public beach access.

(e) Protection of native coastal vegetation and nesting marine turtles and their hatchlings.

(8) If an agency, political subdivision, or municipality installs or authorizes installation of a rigid coastal armoring structure that does not comply with subsection (3), and if the department determines that the action harms or interferes with the protection of the beach-dune system, adversely impacts adjacent properties, interferes with public beach access, or harms native coastal vegetation or nesting marine turtles or their hatchlings, the department may revoke by order the authority of the agency, political subdivision, or municipality under subsection (3) to install or authorize the installation of rigid coastal armoring structures.

Section 2. Paragraph (h) of subsection (2) of section 163.3178, Florida Statutes, is amended to read:

163.3178 Coastal management.--

(2) Each coastal management element required by s. 163.3177(6)(g) shall be based on studies, surveys, and data; be consistent with coastal resource plans prepared and adopted pursuant to general or special law; and contain:

(h) Designation of coastal high-hazard ~~coastal~~ areas and the criteria for mitigation for a comprehensive plan amendment in the coastal high hazard area as defined in s. 163.3178(9). ~~, which for uniformity and planning purposes herein, are defined as category 1 evacuation zones.~~ The Coastal High Hazard Area is the area below the elevation of the Category 1 storm surge line

as established by a Sea, Lake and Overland Surges (SLOSH) computerized storm surge model. ~~However, Application of mitigation~~ The application and redevelopment policies, pursuant to s. 380.27(2), and any rules adopted thereunder, shall be at the discretion of local government.

(9) (a) A proposed comprehensive plan amendment shall be found in compliance with state coast high hazard standards as provided in rule 9J-5.012(3)(b)(6) and (7) if:

(i) the adopted level of service for out-of-county hurricane evacuation is maintained; or

(ii) a 12 hour evacuation time to shelter is maintained and shelter space reasonably attributable to the development contemplated by a proposed comprehensive plan amendment is available; or

(iii) appropriate mitigation to satisfy the provisions of either (i) or (ii) is provided. Appropriate mitigation shall include, without limitation, payment of money, contribution of land and construction of hurricane shelters and transportation facilities. Required mitigation shall not exceed the amount required for a developer to accommodate impacts reasonably attributable to its development. For those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service shall be no greater than 16 hours.

(b) No new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, or nursing homes shall be located within the coastal high hazard area.

(c) This section shall become effective immediately and apply to all local governments. No later than July 1, 2008, local government shall amend their Future Land Use Map and coastal

management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies.

Section 3. Subsection (2), paragraph (d) of section 163.3178, Florida Statutes, is amended to read:

(d) A component which outlines principles for hazard mitigation and protection of human life against the effects of natural disaster, including population evacuation, which take into consideration the capability to safely evacuate the density of coastal population proposed in the future land use plan element in the event of an impending natural disaster. The Division of Emergency Management shall manage the update of the regional hurricane evacuation studies, ensure such studies are done in a consistent manner, and ensure that the methodology used for modeling storm surge is that used by the National Hurricane Center.

Section 4. Subsection (4) of section 381.0065, Florida Statutes, is amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.--

(4) PERMITS; INSTALLATION; AND CONDITIONS.--A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction

permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A

municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(a) Subdivisions and lots in which each lot has a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a water system regulated under s. 381.0062 and onsite sewage treatment and disposal systems, provided the projected daily sewage flow does not exceed an average of 1,500 gallons per acre per day, and provided satisfactory drinking water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of this section and rules adopted under this section can be met.

(b) Subdivisions and lots using a public water system as defined in s. 403.852 may use onsite sewage treatment and disposal systems, provided there are no more than four lots per acre, provided the projected daily sewage flow does not exceed

an average of 2,500 gallons per acre per day, and provided that all distance and setback, soil condition, water table elevation, and other related requirements that are generally applicable to the use of onsite sewage treatment and disposal systems are met.

(c) Notwithstanding the provisions of paragraphs (a) and (b), for subdivisions platted of record on or before October 1, 1991, when a developer or other appropriate entity has previously made or makes provisions, including financial assurances or other commitments, acceptable to the Department of Health, that a central water system will be installed by a regulated public utility based on a density formula, private potable wells may be used with onsite sewage treatment and disposal systems until the agreed-upon densities are reached. The department may consider assurances filed with the Department of Business and Professional Regulation under chapter 498 in determining the adequacy of the financial assurance required by this paragraph. In a subdivision regulated by this paragraph, the average daily sewage flow may not exceed 2,500 gallons per acre per day. This section does not affect the validity of existing prior agreements. After October 1, 1991, the exception provided under this paragraph is not available to a developer or other appropriate entity.

(d) Paragraphs (a) and (b) do not apply to any proposed residential subdivision with more than 50 lots or to any proposed commercial subdivision with more than 5 lots where a publicly owned or investor-owned sewerage system is available. It is the intent of this paragraph not to allow development of additional proposed subdivisions in order to evade the requirements of this paragraph.

(e) Onsite sewage treatment and disposal systems must not be placed closer than:

1. Seventy-five feet from a private potable well.

2. Two hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of greater than 2,000 gallons per day.

3. One hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of less than or equal to 2,000 gallons per day.

4. Fifty feet from any nonpotable well.

5. Ten feet from any storm sewer pipe, to the maximum extent possible, but in no instance shall the setback be less than 5 feet.

6. Seventy-five feet from the mean high-water line of a tidally influenced surface water body.

7. Seventy-five feet from the mean annual flood line of a permanent nontidal surface water body.

8. Fifteen feet from the design high-water line of retention areas, detention areas, or swales designed to contain standing or flowing water for less than 72 hours after a rainfall or the design high-water level of normally dry drainage ditches or normally dry individual lot stormwater retention areas.

(f) Except as provided under paragraphs (e) and (t), no limitations shall be imposed by rule, relating to the distance between an onsite disposal system and any area that either permanently or temporarily has visible surface water.

(g) All provisions of this section and rules adopted under this section relating to soil condition, water table elevation, distance, and other setback requirements must be equally applied to all lots, with the following exceptions:

1. Any residential lot that was platted and recorded on or after January 1, 1972, or that is part of a residential

subdivision that was approved by the appropriate permitting agency on or after January 1, 1972, and that was eligible for an onsite sewage treatment and disposal system construction permit on the date of such platting and recording or approval shall be eligible for an onsite sewage treatment and disposal system construction permit, regardless of when the application for a permit is made. If rules in effect at the time the permit application is filed cannot be met, residential lots platted and recorded or approved on or after January 1, 1972, shall, to the maximum extent possible, comply with the rules in effect at the time the permit application is filed. At a minimum, however, those residential lots platted and recorded or approved on or after January 1, 1972, but before January 1, 1983, shall comply with those rules in effect on January 1, 1983, and those residential lots platted and recorded or approved on or after January 1, 1983, shall comply with those rules in effect at the time of such platting and recording or approval. In determining the maximum extent of compliance with current rules that is possible, the department shall allow structures and appurtenances thereto which were authorized at the time such lots were platted and recorded or approved.

2. Lots platted before 1972 are subject to a 50-foot minimum surface water setback and are not subject to lot size requirements. The projected daily flow for onsite sewage treatment and disposal systems for lots platted before 1972 may not exceed:

a. Two thousand five hundred gallons per acre per day for lots served by public water systems as defined in s. 403.852.

b. One thousand five hundred gallons per acre per day for lots served by water systems regulated under s. 381.0062.

(h)1. The department may grant variances in hardship cases which may be less restrictive than the provisions specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system construction permit, if the transferee files, within 60 days after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was originally granted to the original applicant for the variance. There is no fee associated with the processing of this supplemental information. A variance may not be granted under this section until the department is satisfied that:

a. The hardship was not caused intentionally by the action of the applicant;

b. No reasonable alternative, taking into consideration factors such as cost, exists for the treatment of the sewage; and

c. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.

Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory, special consideration must be given to those lots platted before 1972.

2. The department shall appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee

shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:

a. The Division Director for Environmental Health of the department or his or her designee.

b. A representative from the county health departments.

c. A representative from the home building industry recommended by the Florida Home Builders Association.

d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.

e. A representative from the Department of Environmental Protection.

f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.

g. A representative from the engineering profession recommended by the Florida Engineering Society.

Members shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(i) A construction permit may not be issued for an onsite sewage treatment and disposal system in any area zoned or used for industrial or manufacturing purposes, or its equivalent, where a publicly owned or investor-owned sewage treatment system is available, or where a likelihood exists that the system will receive toxic, hazardous, or industrial waste. An existing onsite sewage treatment and disposal system may be repaired if a publicly owned or investor-owned sewerage system is not available within 500 feet of the building sewer stub-out and if system construction and operation standards can be met. This paragraph does not require publicly owned or investor-owned sewerage treatment systems to accept anything other than domestic wastewater.

1. A building located in an area zoned or used for industrial or manufacturing purposes, or its equivalent, when such building is served by an onsite sewage treatment and disposal system, must not be occupied until the owner or tenant has obtained written approval from the department. The department shall not grant approval when the proposed use of the system is to dispose of toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals.

2. Each person who owns or operates a business or facility in an area zoned or used for industrial or manufacturing purposes, or its equivalent, or who owns or operates a business that has the potential to generate toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals, and uses an onsite sewage treatment and disposal system that is installed on or after July 5, 1989, must obtain an annual system operating permit from the department. A person who owns or operates a business that uses an onsite sewage treatment and disposal system that was installed and approved before July 5, 1989, need

not obtain a system operating permit. However, upon change of ownership or tenancy, the new owner or operator must notify the department of the change, and the new owner or operator must obtain an annual system operating permit, regardless of the date that the system was installed or approved.

3. The department shall periodically review and evaluate the continued use of onsite sewage treatment and disposal systems in areas zoned or used for industrial or manufacturing purposes, or its equivalent, and may require the collection and analyses of samples from within and around such systems. If the department finds that toxic or hazardous chemicals or toxic, hazardous, or industrial wastewater have been or are being disposed of through an onsite sewage treatment and disposal system, the department shall initiate enforcement actions against the owner or tenant to ensure adequate cleanup, treatment, and disposal.

(j) An onsite sewage treatment and disposal system for a single-family residence that is designed by a professional engineer registered in the state and certified by such engineer as complying with performance criteria adopted by the department must be approved by the department subject to the following:

1. The performance criteria applicable to engineer-designed systems must be limited to those necessary to ensure that such systems do not adversely affect the public health or significantly degrade the groundwater or surface water. Such performance criteria shall include consideration of the quality of system effluent, the proposed total sewage flow per acre, wastewater treatment capabilities of the natural or replaced soil, water quality classification of the potential surface-water-receiving body, and the structural and maintenance viability of the system for the treatment of domestic

wastewater. However, performance criteria shall address only the performance of a system and not a system's design.

2. The technical review and advisory panel shall assist the department in the development of performance criteria applicable to engineer-designed systems.

3. A person electing to utilize an engineer-designed system shall, upon completion of the system design, submit such design, certified by a registered professional engineer, to the county health department. The county health department may utilize an outside consultant to review the engineer-designed system, with the actual cost of such review to be borne by the applicant. Within 5 working days after receiving an engineer-designed system permit application, the county health department shall request additional information if the application is not complete. Within 15 working days after receiving a complete application for an engineer-designed system, the county health department either shall issue the permit or, if it determines that the system does not comply with the performance criteria, shall notify the applicant of that determination and refer the application to the department for a determination as to whether the system should be approved, disapproved, or approved with modification. The department engineer's determination shall prevail over the action of the county health department. The applicant shall be notified in writing of the department's determination and of the applicant's rights to pursue a variance or seek review under the provisions of chapter 120.

4. The owner of an engineer-designed performance-based system must maintain a current maintenance service agreement with a maintenance entity permitted by the department. The maintenance entity shall obtain a biennial system operating permit from the department for each system under service

contract. The department shall inspect the system at least annually, or on such periodic basis as the fee collected permits, and may collect system-effluent samples if appropriate to determine compliance with the performance criteria. The fee for the biennial operating permit shall be collected beginning with the second year of system operation. The maintenance entity shall inspect each system at least twice each year and shall report quarterly to the department on the number of systems inspected and serviced.

5. If an engineer-designed system fails to properly function or fails to meet performance standards, the system shall be re-engineered, if necessary, to bring the system into compliance with the provisions of this section.

(k) An innovative system may be approved in conjunction with an engineer-designed site-specific system which is certified by the engineer to meet the performance-based criteria adopted by the department.

(l) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and which considers water table elevations, densities, and setback requirements. On lots where a setback distance of 75 feet from surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for disposal of effluent from onsite sewage treatment and disposal systems.

(m) No product sold in the state for use in onsite sewage treatment and disposal systems may contain any substance in concentrations or amounts that would interfere with or prevent

the successful operation of such system, or that would cause discharges from such systems to violate applicable water quality standards. The department shall publish criteria for products known or expected to meet the conditions of this paragraph. In the event a product does not meet such criteria, such product may be sold if the manufacturer satisfactorily demonstrates to the department that the conditions of this paragraph are met.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(i). The department shall accept evaluations submitted by professional engineers and such other persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the evaluation.

(o) The department shall appoint a research review and advisory committee, which shall meet at least semiannually. The committee shall advise the department on directions for new research, review and rank proposals for research contracts, and review draft research reports and make comments. The committee is comprised of:

1. A representative of the Division of Environmental Health of the Department of Health.

2. A representative from the septic tank industry.

3. A representative from the home building industry.

4. A representative from an environmental interest group.

5. A representative from the State University System, from a department knowledgeable about onsite sewage treatment and disposal systems.

6. A professional engineer registered in this state who has work experience in onsite sewage treatment and disposal systems.

7. A representative from the real estate profession.

8. A representative from the restaurant industry.

9. A consumer.

Members shall be appointed for a term of 3 years, with the appointments being staggered so that the terms of no more than four members expire in any one year. Members shall serve without remuneration, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061.

(p) An application for an onsite sewage treatment and disposal system permit shall be completed in full, signed by the owner or the owner's authorized representative, or by a contractor licensed under chapter 489, and shall be accompanied by all required exhibits and fees. No specific documentation of property ownership shall be required as a prerequisite to the review of an application or the issuance of a permit. The issuance of a permit does not constitute determination by the department of property ownership.

(q) The department may not require any form of subdivision analysis of property by an owner, developer, or subdivider prior to submission of an application for an onsite sewage treatment and disposal system.

(r) Nothing in this section limits the power of a municipality or county to enforce other laws for the protection of the public health and safety.

(s) In the siting of onsite sewage treatment and disposal systems, including drainfields, shoulders, and slopes, guttering shall not be required on single-family residential dwelling units for systems located greater than 5 feet from the roof drip line of the house. If guttering is used on residential dwelling units, the downspouts shall be directed away from the drainfield.

(t) Notwithstanding the provisions of subparagraph (g)1., onsite sewage treatment and disposal systems located in floodways of the Suwannee and Aucilla Rivers must adhere to the following requirements:

1. The absorption surface of the drainfield shall not be subject to flooding based on 10-year flood elevations. Provided, however, for lots or parcels created by the subdivision of land in accordance with applicable local government regulations prior to January 17, 1990, if an applicant cannot construct a drainfield system with the absorption surface of the drainfield at an elevation equal to or above 10-year flood elevation, the department shall issue a permit for an onsite sewage treatment and disposal system within the 10-year floodplain of rivers, streams, and other bodies of flowing water if all of the following criteria are met:

a. The lot is at least one-half acre in size;

b. The bottom of the drainfield is at least 36 inches above the 2-year flood elevation; and

c. The applicant installs either: a waterless, incinerating, or organic waste composting toilet and a graywater system and drainfield in accordance with department rules; an aerobic treatment unit and drainfield in accordance with department rules; a system approved by the State Health Office that is capable of reducing effluent nitrate by at least 50

percent; or a system approved by the county health department pursuant to department rule other than a system using alternative drainfield materials. The United States Department of Agriculture Soil Conservation Service soil maps, State of Florida Water Management District data, and Federal Emergency Management Agency Flood Insurance maps are resources that shall be used to identify flood-prone areas.

2. The use of fill or mounding to elevate a drainfield system out of the 10-year floodplain of rivers, streams, or other bodies of flowing water shall not be permitted if such a system lies within a regulatory floodway of the Suwannee and Aucilla Rivers. In cases where the 10-year flood elevation does not coincide with the boundaries of the regulatory floodway, the regulatory floodway will be considered for the purposes of this subsection to extend at a minimum to the 10-year flood elevation.

(u) The owner of an aerobic treatment unit system shall maintain a current maintenance service agreement with an aerobic treatment unit maintenance entity permitted by the department. The maintenance entity shall obtain a system operating permit from the department for each aerobic treatment unit under service contract. The maintenance entity shall inspect each aerobic treatment unit system at least twice each year and shall report quarterly to the department on the number of aerobic treatment unit systems inspected and serviced. The owner shall allow the department to inspect during reasonable hours each aerobic treatment unit system at least annually, and such inspection may include collection and analysis of system-effluent samples for performance criteria established by rule of the department.

(v) The department may require the submission of detailed system construction plans that are prepared by a professional engineer registered in this state. The department shall establish by rule criteria for determining when such a submission is required.

Section 5. This act shall take effect upon becoming a law.

========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

A bill to be entitled

An act relating to hazard mitigation for coastal redevelopment; amending s. 161.085, F.S.; specifying entities that are authorized to install or authorize installation of rigid coastal armoring structures; authorizing the Department of Environmental Protection to revoke certain authority; amending s. 163.3178, F.S.; providing for designation of coastal high hazard areas; providing criteria for mitigation for increased population densities; providing compliance standards; providing a deadline for level of service for out of county hurricane evacuation; restricting new development of certain structures within the coastal high hazard area; providing a deadline for local governments to amend future land use maps; requiring the Division of Emergency Management to manage certain hurricane evacuation studies; requiring that such studies be performed in a specified manner; amending s. 381.0065, F.S.; requiring the issuance of certain permits by the Department of Health to be contingent upon the receipt of certain permits issued by the Department of Environmental Protection; providing an effective date.

609

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 701 CS Alternative Energy
SPONSOR(S): Justice
TIED BILLS: **IDEN./SIM. BILLS:** SB 572

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	15 Y, 0 N, w/CS	Cater	Holt
2) Environmental Regulation Committee		Perkins RP	Kliner
3) Transportation & Economic Development Appropriations Committee			
4) Commerce Council			
5)			

SUMMARY ANALYSIS

The bill establishes the Florida Renewable Energy Center, Inc., (Center) as a not-for-profit corporation, to be the principal alternative energy technology organization for the state. Its primary functions are to provide leadership for research, development, and deployment of alternative energy technologies. These functions are to be accomplished through collaborative efforts with state universities, the private sector, and the Department of Environmental Protection (DEP). A goal for the Center is to develop and make recommendations to the Legislature, Governor, and state agencies for alternative energy policies.

The Center shall be governed by a board of directors, and the bill outlines the appointment process. Also, the bill includes the powers and functions of the board of directors

The bill provides for an appropriation of $500,000 from the General Revenue Fund to the Executive Office of the Governor to fund the activities of the Center.

This act shall take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government-The bill establishes the Florida Alternative Energy Technology Center as a not-for-profit corporation to be the principal alternative energy technology organization for the state.

B. EFFECT OF PROPOSED CHANGES:

Background

The DEP operates the Florida Energy Office, which is the state's primary center for developing and implementing energy policy and coordinates all federal energy programs delegated to the state, including energy supply, demand, conservation, and allocation.

Research on renewable energy resources, energy conservation, and other alternative energy sources is conducted by state universities, the Florida Solar Energy Center, and through grants from the DEP's Florida Energy Office.

Proposed Changes

The bill provides legislative findings that it is in the public interest to promote, conduct research on, and use renewable energy resources, energy conservation, distributed generation, advanced transmission methods, and pollution control. It also finds that Florida and the United States are overly dependent of fossil fuels to meet our energy needs, and that renewable energy and conservation resources has the potential to decrease our dependence on fossil fuels, minimize volatility in fuel costs, and improve environmental conditions. The bill also finds that distributed energy resources and enhancements to electric transmissions can potentially make the electricity supply more secure and decrease the likelihood and severity of blackouts. Additionally, research can make the state a leader in new and innovative technologies and encourage investment and economic development.

The bill defines "alternative energy technology" to include, but not limited to: hydrogen fuel, fuel cells, distributed generation, biodiesel and similar synthetic fuels, thermo-depolymerization, biomass, agricultural products and byproducts, municipal solid waste (including landfill injection, landfill mining, landfill gas), solar thermal and solar photovoltaic energy, ocean energy (including wave or thermal), energy conservation (including building, equipment, and appliance efficiency technologies), enhancements to the transmission of electricity (including advanced transmission lines), and environmental standards.

The bill creates the Center as a not-for-profit corporation, which must be registered, incorporated, organized, and operated in compliance with ch. 617, F.S. While the Center is not to be a unit or entity of state government, the Legislature determines that public policy dictates that it operate in an open and accessible manner. The Legislature declares that its board of director, tasks forces, advisory committees and similar advisory groups are subject to the public records provisions of ch. 119, F.S., and to the provisions of ch. 286, F.S. relating to public meetings and records.

The Center is to be the principal alternative energy technology organization for the state and is to provide leadership for research, development, and deployment of alternative energy technology in Florida. It is created as a not-for-profit corporation, and it is to have the following duties:

- Establish a unified approach to research, development, and deployment of alternative energy technology, with the cooperation of the Governor, the Legislature, the DEP, the Statewide Board of Governors of the State University System, the Public Service Commission (PSC), and

relevant businesses in the private sector. The approach must supplement and may not displace the energy initiatives of the DEP;

- Assist the state universities and the private sector in determining areas on which to focus research in alternative energy technology and to assist in coordinating research projects among the universities and relevant private-sector entities;
- Assist the DEP and the private sector in determining the areas on which to focus alternative energy development or deployment projects;
- Promote the state as a location for businesses having operations related to alternative energy technologies in cooperation with Enterprise Florida, Inc., and the DEP;
- Assist universities, other state entities, and private companies in raising funds from all available public or private-sector sources for alternative energy technology projects;
- Collect and maintain information relating to: funding sources; alternative energy technology research, development, or deployment projects; and alternative energy technology businesses considering operations in Florida;
- Make policy recommendations to the Legislature, Governor, and state agencies and subdivisions.

Additionally, the Center may conduct research when the particular research is not or cannot be done by a state university or the DEP, and the Center may only conduct such projects using its own personnel and facilities, or in cooperation with universities, DEP, and/or private companies.

In performing these duties, the Center is required to ensure maximum benefit to the state and is required to act in the best interest of the state. As part thereof, the Center shall establish strategic priorities consistent with certain findings to guide funding allocations and ensure the best use of available resources.

The Center must establish one or more corporate offices, one of which must be located in Leon County.

The Center's board of directors includes the following members:

- A representative from the DEP;
- The President of Enterprise Florida, Inc., or his or her designee;
- A representative from the State Board of Education, selected by the members of that board;
- A representative selected by the Florida investor-owned electric utilities with a term of two years;
- A representative selected by the Florida municipal electric utilities and rural electric cooperatives with a term of two years;
- A representative selected by the President of the Senate who is a board member or executive officer of a business that is located in Florida and that does not have any business interests relating to energy who can provide guidance as to locating and operating a business in this state with a term of two years;
- A representative selected by the Speaker of the House of Representatives who is a board member or executive officer of a business that is located in Florida and that does not have any business interests relating to energy who can provide guidance as to locating and operating a business in this state with a term of two years;
- A representative selected by the Governor from an environmental group who is informed about energy matters of the state with a term of two years.

When a board member's term has expired, a new member must be selected by the group that originally appointed the member. Vacancies on the board must be filled in the same manner as the original appointment. Vacancies shall be filled for the remainder of the unexpired term, where applicable.

The board must select a chairperson biennially, upon appointment of all new members. Also, the board must meet at least four times each year, upon the call of the chairperson, or at the request of a majority

of the membership. A majority of the total number of directors constitutes a quorum, and the board may take official action by majority vote of the members present.

Members of the board serve without compensation, but members, the president, and staff may be reimbursed for all reasonable, necessary, and actual expenses. Each member of the board who is not otherwise required to file a financial disclosure statement must file such a disclosure statement as required pursuant to section 112.3145, F.S.

The powers and duties of the board, including the following, are specified:

- Ability to enter into contracts;
- Sue and be sued;
- Adopt, use, and alter a corporate seal;
- Election or appointment of officers and agents and allow them reasonable compensation;
- Establish bylaws;
- Use of patents, copyrights, and trademarks;
- Use of state seal;
- Invest unspent funds;
- Procure insurance or required bonds;
- Create and dissolve advisory committees, task forces, or similar working groups;
- Solicit input from the public.

The bill provides that these powers should be liberally construed so that the Center may pursue its purpose.

The board of directors must appoint a corporate president and establish and adjust the president's compensation. The president serves as the chief administrative and operational officer of the board and of the corporation, and directs and supervises the administrative affairs of the board and each working group created by the board.

The corporation's board of directors and officers are responsible for the prudent use of all funds the corporation controls and must ensure that such funds are used in accordance with applicable laws, bylaws, and contractual requirements. Employees of the corporation may not receive compensation which exceeds the salary of the Governor, unless the board and the employee have executed a contract that prescribes specific, measurable performance outcomes, the satisfaction of which provides the basis for incentive payments that increase the employee's total compensation to a level above the salary paid to the government.

The credit of the state may not be pledged on behalf of the corporation.

In addition to any indemnification available under ch. 617, F.S., the corporation may indemnify, and purchase and maintain insurance on behalf of its directors, officers, employees, or working-group members against personal liability or accountability for actions taken within the scope of their employment or authority.

By December 1 of each year, the corporation must submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairman of the State Board of Education. The report must include a description of the Center's activities and accomplishments; an annual financial accounting by an independent certified public accountant; a statement of its strategic priorities and their use in guiding resource allocations; and any recommendations the Center has for action by the Legislature or by the agencies of state, county or municipal governments to foster development or use of alternative energy technology.

The bill appropriates $500,000 from the General Revenue Fund to the Executive Office of the Governor for funding the activities of the Florida Alternative Energy Technology Center, Inc., for the 2005-2006 fiscal year.

This act shall take effect upon becoming law.

C. SECTION DIRECTORY:

Section 1 Creates the Florida Alternative Energy Technology Center, Inc.

Section 2 Provides for an appropriation of $500,000 for the 2005-2006 fiscal year.

Section 3 This act shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   The bill appropriates $500,000 from the General Revenue Fund to the Executive Office of the Governor to fund the activities of the Florida Alternative Energy Technology Center.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2006, the Utilities & Telecommunications Committee adopted two amendments, these amendments:

- Allow the President of Enterprise Florida, Inc. to appoint a designee to serve on the board of directors.
- Removed a provision concerning a trust fund.

CHAMBER ACTION

The Utilities & Telecommunications Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to alternative energy; providing legislative findings; providing definitions; creating the Florida Alternative Energy Technology Center, Inc., as a not-for-profit corporation; requiring compliance with public meetings and records laws; providing for the organization, purpose, and duties of the center; providing for the membership on the board of directors of the center; requiring the disclosure of financial interests by board members; specifying the powers and duties of the board; requiring an annual report; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Florida Alternative Energy Technology Center, Inc.; findings; creation; membership; organization; purpose; duties; powers.--

(1) The Legislature finds that it is in the public interest to promote research on and use of renewable energy resources, energy conservation, distributed generation, advanced transmission methods, and pollution control. Both Florida and the United States in general are overly dependent on fossil fuels to meet the energy needs of homes and businesses. Renewable energy resources and energy conservation resources have the potential to decrease this dependency, minimize volatility of fuel cost, and improve environmental conditions. Distributed energy resources and enhancements to the transmission of electricity have the potential to make our supply of electricity more secure and to decrease the likelihood and severity of blackouts. Research in this state on these subjects can make the state a leader in new and innovative technologies and encourage investment and economic development in this state.

(2) As used in this section, the term:

(a) "Corporation" means the Florida Alternative Energy Technology Center, Inc.

(b) "Alternative energy technology" means energy technologies that are undeveloped or less than established in current markets. The term includes, but is not limited to, hydrogen fuel; fuel cells; distributed generation; biodiesel and similar synthetic fuels; thermo-depolymerization; biomass; agricultural products and byproducts; municipal solid waste, including landfill injection, landfill mining, and landfill gas; solar thermal and solar photovoltaic energy; ocean energy, including wave or thermal; energy conservation, including

building, equipment, and appliance efficiency technologies; enhancements to the transmission of electricity, including advanced transmission lines; and environmental standards.

(3) There is created a not-for-profit corporation, to be known as the Florida Alternative Energy Technology Center, Inc., which must be registered, incorporated, organized, and operated in compliance with chapter 617, Florida Statutes, and which is not to be a unit or entity of state government. The Legislature determines, however, that public policy dictates that the corporation operate in the most open and accessible manner consistent with its public purpose. To this end, the Legislature specifically declares that the corporation and its board of directors and the task forces, advisory committees, and similar working groups that the corporation creates are subject to the provisions of chapter 119, Florida Statutes, relating to public records and the provisions of chapter 286, Florida Statutes, relating to public meetings and records.

(4) The corporation is the principal alternative energy technology organization for the state and shall provide leadership for research, development, and deployment of alternative energy technology in this state, including production of, improvements in, and the use of such technology. In fulfilling this responsibility, the corporation shall:

(a) Establish a unified approach to research, development, and the deployment of alternative energy technology, with the cooperation of the Governor, the Legislature, the Department of Environmental Protection, the Statewide Board of Governors of the State University System, the Public Service Commission, and

relevant private-sector entities. The approach established must supplement and not displace the energy initiatives of the Department of Environmental Protection.

(b) Assist the state universities and the private sector in determining the areas on which to focus research in alternative energy technology and to assist in coordinating research projects among the universities and relevant private-sector entities.

(c) Assist the Department of Environmental Protection and the private sector in determining the areas on which to focus alternative-energy-technology development or deployment projects and in coordinating such projects among relevant public and private-sector entities.

(d) Promote the state as a location for businesses having operations related to alternative energy technologies in cooperation with Enterprise Florida, Inc., and the Department of Environmental Protection.

(e) Assist universities, other state entities, and private-sector entities in raising funds from all available public or private-sector sources for projects concerning research, development, or deployment of alternative energy technology, including projects that involve the production of, improvements in, or use of alternative energy technology in this state.

(f) Collect and maintain information relating to sources of funding for its work; alternative-energy-technology research, development, or deployment projects that are or have been

conducted or that are needed; and alternative-energy-technology businesses that are considering operations in this state.

(g) Make policy recommendations to the Legislature, the Governor, and state agencies and subdivisions.

(5) The corporation may conduct projects concerning research, development, or deployment of alternative energy technology that are not or cannot be conducted by a state university or the Department of Environmental Protection. The corporation may conduct such projects using only its own personnel and facilities, or in cooperation with one or more universities, one or more private-sector entities, the Department of Environmental Protection, or any combination of such potential cooperating entities.

(6) In performing its functions, the corporation shall take all possible steps to ensure the maximum benefit to the state. As part thereof, the corporation shall establish strategic priorities, consistent with the findings of this section, to guide funding allocations and ensure the best use of available resources.

(7) The corporation must establish one or more corporate offices, at least one of which must be located in Leon County.

(8) The corporation shall be governed by a board of directors consisting of the following members:

(a) A representative from the Department of Environmental Protection.

(b) The President of Enterprise Florida, Inc., or his or her designee.

(c) A representative from the State Board of Education, selected by the members of that board.

(d) A representative selected by the public utilities, as that term is defined in s. 366.02, Florida Statutes. The term for this board member shall be 2 years, with a new representative selected at the end of that time.

(e) A representative selected by the Florida municipal electric utilities and rural electric cooperatives. The term for this board member shall be 2 years, with a new representative selected at the end of that time.

(f) A representative, selected by the President of the Senate, who is a board member or executive officer of a business that is located in this state, who has no business interests relating to energy, and who can provide guidance as to locating and operating a business in this state. The term for this board member shall be 2 years, with a new representative selected at the end of that time.

(g) A representative, selected by the Speaker of the House of Representatives, who is a board member or executive officer of a business that is located in this state, who has no business interests relating to energy, and who can provide guidance as to locating and operating a business in this state. The term for this board member shall be 2 years, with a new representative selected at the end of that time.

(h) A representative, selected by the Governor, who is from an environmental group that is informed about energy matters of this state. The term for this board member shall be 2

years, with a new representative selected at the end of that time.

(9) Vacancies on the board of directors of the corporation must be filled in the same manner as the original appointment. Vacancies shall be filled for the remainder of the unexpired term, where applicable.

(10) The members of the board of directors of the corporation must select a chair biennially, upon appointment of all new members.

(11) The board of directors of the corporation must meet at least four times each year, upon the call of the chair, or at the request of a majority of the membership. A majority of the total number of all directors constitutes a quorum. The board may take official action by a majority vote of the members present at any meeting at which a quorum is present.

(12) Members of the board of directors of the corporation shall serve without compensation, but members, the president, and staff may be reimbursed for all reasonable, necessary, and actual expenses, as determined by the board.

(13) Each member of the board of directors of the corporation who is not otherwise required to file a financial disclosure pursuant to Section 8, Article II of the State Constitution or s. 112.3144, Florida Statutes, must file a disclosure of financial interests pursuant to s. 112.3145, Florida Statutes.

(14) The board of directors of the corporation may:

(a) Secure funding for programs and activities of the corporation and its boards from public and private-sector

sources and from fees charged for services or published materials, and solicit, receive, hold, invest, and administer any grant, payment, or gift of funds or property and make expenditures consistent with the powers granted to it.

(b) Make and enter into contracts and other instruments necessary or convenient for the exercise of its powers and functions.

(c) Sue and be sued, and appear and defend in all actions and proceedings, in its corporate name to the same extent as a natural person.

(d) Adopt, use, and alter a common corporate seal for the corporation and its boards.

(e) Elect or appoint such officers and agents as its affairs require and allow them reasonable compensation.

(f) Adopt, amend, and repeal bylaws, not inconsistent with the powers granted to it or the articles of incorporation, for the administration of the affairs of the corporation and the exercise of its corporate powers.

(g) Acquire, enjoy, use, and dispose of patents, copyrights, and trademarks and any licenses, royalties, and other rights or interests thereunder or therein.

(h) Do all acts and things necessary or convenient to carry out the powers granted to it.

(i) Use the state seal, notwithstanding the provisions of s. 15.03, Florida Statutes, when appropriate, to establish that the corporation is the principal alternative energy technology organization for the state, and for other standard corporate

identity applications. Use of the state seal may not replace use of a corporate seal as provided in this subsection.

(j) Invest any funds unspent at the end of the fiscal year to maximize the use of those funds.

(k) Procure insurance or require bond against any loss in connection with the property of the corporation and its board of directors or working groups, in such amounts and from such insurers as is necessary or desirable.

(l) Create and dissolve advisory committees, task forces, or similar working groups as necessary to carry out the corporation's mission. Members of such groups shall serve without compensation but may be reimbursed for reasonable, necessary, and actual expenses, as determined by the corporation's board of directors.

(m) Solicit input from the public, organizations concerned about energy in this state, and experts in the field.

(15) The powers granted to the corporation shall be liberally construed so that the corporation may aggressively pursue its purpose of being the principal alternative energy technology organization for the state.

(16) The corporation's board of directors must appoint a corporate president and establish and adjust the president's compensation. The president is the chief administrative and operational officer of the board of directors and of the corporation, and directs and supervises the administrative affairs of the board and each working group created by the board. The board of directors may delegate to its president

those powers and responsibilities it deems appropriate, except for the appointment of a president.

(17) The board of directors and officers of the corporation are responsible for the prudent use of all public and private funds that the corporation controls and must ensure that the use of such funds is in accordance with applicable laws, bylaws, and contractual requirements. An employee of the corporation may not receive compensation for employment which exceeds the salary paid to the Governor, unless the board of directors and the employee have executed a contract that prescribes specific, measurable performance outcomes for the employee, the satisfaction of which provides the basis for the award of incentive payments that increase the employee's total compensation to a level above the salary paid to the Governor.

(18) The credit of the State of Florida may not be pledged on behalf of the corporation.

(19) In addition to any indemnification available under chapter 617, Florida Statutes, the corporation may indemnify, and purchase and maintain insurance on behalf of, its directors, officers, employees, or working-group members against personal liability or accountability for actions taken within the scope of their employment or authority.

(20) By December 1 of each year, the corporation must submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chair of the State Board of Education containing:

(a) A detailed description of the corporation's activities and accomplishments for the year.

(b) An annual financial accounting of resources and expenditures prepared by an independent certified public accountant.

(c) A statement of the strategic priorities of the corporation and their use in guiding resource allocations.

(d) Any recommendations the corporation has for action by the Legislature or by the agencies of state, county, or municipal governments to foster research concerning, or development or deployment of, alternative energy technology.

Section 2. The sum of $500,000 is appropriated from the General Revenue Fund to the Executive Office of the Governor for the purpose of funding the activities of the Florida Alternative Energy Technology Center, Inc., for the 2006-2007 fiscal year.

Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 313 Regulation of Releases from Gambling Vessels
SPONSOR(S): Allen
TIED BILLS: **IDEN./SIM. BILLS:** SB 732

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee		Perkins RP	Kliner
2) Business Regulation Committee			
3) Governmental Operations Committee			
4) Agriculture & Environment Appropriations Committee			
5) State Resources Council			

SUMMARY ANALYSIS

The bill requires the Department of Environmental Protection (DEP) to register gambling vessels and to regulate certain waste disposal releases from gambling vessels.

Specifically, the bill requires:

- Gambling vessels to hold specified waste while in coastal waters and then release the wastes upon returning to a port facility in accordance with the procedures of the port facility.
- Port authorities to establish procedures and a process for verification of contents and for the release of specified waste streams.
- Port authorities to establish and collect a fee not to exceed the costs associated with disposal of the required releases from gambling vessels.
- Owners or operators of gambling vessels to report releases into coastal waters within 24 hours to DEP, and provides for civil penalties for violations.

The bill authorizes DEP to adopt rules to implement and administer the provisions provided for in the bill.

The overall fiscal impact of the bill is indeterminate.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited Government: The bill requires DEP to register gambling vessels and to regulate certain waste disposal releases from gambling vessels.

Ensure Lower Taxes: The bill requires port authorities to establish and collect a fee not to exceed the actual costs associated with collection and disposal of the releases from gambling vessels.

Safeguard Individual Liberty: The bill requires DEP to register gambling vessels and to regulate certain waste disposal releases from gambling vessels. The bill prohibits gambling vessels from releasing certain waste disposals within areas otherwise permissible under federal regulations.

Promote Personal Responsibility: The bill requires DEP to register gambling vessels and to regulate certain waste disposal releases from gambling vessels. The bill requires port authorities to establish and collect a fee not to exceed the costs associated with disposal of the releases from gambling vessels. The bill requires owners or operators of gambling vessels to report releases into coastal waters within 24 hours to DEP, and provides for civil penalties for violations.

B. EFFECT OF PROPOSED CHANGES:

Background

Each day thousands of vessels use our waterways for transportation, commercial and recreational activities. Protecting our environment includes the proper handling of waste and wastewater management practices onboard these vessels.

Discharge of oil and other pollutants is prohibited under current state law.[1] For this purpose, the term "discharge" includes, but is not limited to, "any spilling, leaking, seeping, pouring, emitting, emptying, or dumping."[2] Not only does the provision cover discharges which occur within Florida's territorial limits, the statute has explicit extraterritorial effect if the discharge "affects lands and waters within the territorial limits of the state."[3] Penalties for discharging oil or other pollutants range up to $50,000 per day.[4] Violators are liable for cleanup costs, and can be required to compensate the state for any damage done to the state's natural resources.[5]

Similarly, it is a violation of state law to discharge untreated sewage.[6] Discharge of untreated sewage from a commercial vessel is presumptively done for a commercial purpose, and is a felony of the third degree.[7] Violations of the federal regulations pertaining to marine sanitation devices are also sanctionable under color of state law.[8] Although in theory these provisions apply beyond the territorial limits of the state (the waters of this state include "the high seas when navigated as a part of a journey or ride to or from the shore of this state")[9], the extraterritorial effect is not significant because the federal regulations enforceable under the state statute do not apply beyond three nautical miles from shore.

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[1] s. 376.041, F.S.
[2] s. 376.031(7), F.S.
[3] Id.
[4] s. 376.16, F.S.
[5] s. 376.12, F.S. and s. 376.121, F.S.
[6] s. 327.53(4), F.S. and s. 403.413(5), F.S.
[7] s. 403.413(6), F.S.
[8] s. 327.53(5), F.S.
[9] s. 327.02(38), F.S.

The penalties for discharging solid waste from a vessel into state waters include civil penalties of up to $10,000 per day.[10] The DEP may also assess administrative penalties of $2,000 per day, plus another $1,000 because the waste is placed in a water body, plus another $1,000 if the waste is untreated biomedical waste.[11] The disposal of hazardous wastes is tightly regulated under part IV of chapter 403, F.S., and disposal violations are similarly severely sanctioned.[12]

Florida Gambling Vessel Industry

Florida has a thriving day-cruise industry which offers gamblers the opportunity to board casino vessels that cruise offshore where casino gambling is legal. From the east coast of Florida, gambling vessels travel beyond the jurisdictional limits of the state (three miles out into the Atlantic Ocean and nine miles out into the Gulf of Mexico) to gamble. There appear to be 10 gambling vessels operating from Florida. The 10 gambling vessels identified operate from the following locations:

- Cape Canaveral (Sterling Casino Lines, Ambassador II)
- Fort Lauderdale (Discovery Sun and SeaEscape Island Adventure)
- Fort Myers Beach (Big M Casino)
- Jacksonville (La Cruise Casino)
- Key Largo (SunCruz Casino)
- Mayport (SunCruz Casino)
- Ponce Inlet (SunCruz Casino)
- Port Canaveral (SunCruz Casino)
- Riviera Beach (Palm Beach Princess)[13]

Cruise Ship Memorandum of Understanding (MOU)

Apart from the gambling day-cruise ships, there are over 80 cruise ships that leave various Florida ports and sail to various locations in the Caribbean and the Gulf. DEP has a MOU with the cruise line professional associations under which cruise ships implement waste and wastewater management practices; however, the gambling vessels do not participate as parties to that operating agreement. The waste management practices and procedures contained within the cruiseline MOU meet or exceed the standards set forth in Florida laws and applicable Florida regulations. Those cruise ships operating under the MOU have agreed to not discharge graywater and blackwater while the ship is underway and proceeding at a speed of not less than 6 knots and within 4 nautical miles from shore or such distance as agreed to with authorities having jurisdiction or provided for by local law except in an emergency, or geographically limited circumstances. The term "graywater" is used to refer to wastewater that is generally incidental to the operation of the ship (i.e., drainage from the dishwasher, shower, laundry, bath and washbasin drains.) The term "blackwater" is used to refer to waste from toilets, urinals, medical sinks, and other similar facilities. Most cruise ships separate blackwater from other wastewaters before processing and discharge.[14]

[10] s. 403.121(1)(b), F.S.
[11] s. 403.121(3)(e), F.S.
[12] Alan Richard (past Chair of the Florida Bar's Admiralty Law Committee and Florida State University, College of Law, Adjunct Professor of Admiralty and Maritime Law) e-mail, March 21, 2006
[13] HB 313 DEP Bill Analysis (2006)
[14] Cruise ship MOU, December 6, 2001

Florida Ports Waste Infrastructure

The Florida Ports Council researched the capability of Florida's deepwater seaports to pump-out sewage, oily bilge water, untreated or treated gray water, untreated or treated black water, hazardous waste, or biomedical waste from any gambling vessel. The research provided the following results:

- Most seaports have no fixed shore-side capacity to pump-out sewage.
- Those seaports which have provided pump-out sewage services have done so by contracting with tank trucks operated by licensed private waste disposal firms.
- Liquid waste materials, with the exception of hazardous and biomedical waste, are pumped through hoses from vessels to tank trucks.
- Sewage and gray water are processed either at a port's sanitary waste water system (if a system is located at the port) or hauled by the waste disposal firm to an off-site location.
- Blackwater is generally hauled by the waste disposal firms to an off-site location.
- Removal and disposal of hazardous and biomedical waste is generally handled by the vessel operators without interaction or involvement by seaports.

Brevard County Near Shore Ocean Nutrification Analysis

Brevard County contracted the National Oceanographic and Atmospheric Administration (NOAA) to assemble an expert panel to conduct a review of the data and literature contained in the report assembled on January 21, 2005, known as BREVARD COUNTY NEAR SHORE OCEAN NUTRIFICATION ANALYSIS. The expert panel summarized that unless the gambling cruise vessels increase, the available data indicate that gaming vessel discharges are less likely to be regionally significant than cruise ship discharges and that nutrient data presently available do not indicate nutrient elevation.

Federal Maritime Regulation of Waste

The discharge of sewage is substantially regulated at the federal level and Congress has expressly prohibited states from imposing additional regulations on vessels. Currently, it is permissible under federal regulations to discharge untreated sewage beyond three nautical miles from shore.[15] The DEP does not have jurisdiction for purposes of water pollution regulation over a discharge that is located more than three miles from the Atlantic coastline.[16] It is, therefore, likely that enforcement of this bill beyond the territorial limits of the state would be impossible as the bill is presently drafted.[17]

Effect of Proposed Change

The bill creates section 376.25, F.S., cited as the "Clean Ocean Act." The bill provides definitions relating to different types of waste and their disposal from a gambling vessel.

Gambling Vessel Registration

The bill requires the owner or operator of a gambling vessel to annually register under oath with DEP before the vessel enters the waters of the state. The registration must include the following Information:

- Vessel' owners business name or vessel operator's business name for each gambling vessel that is scheduled to be in coastal waters during the calendar year.
- Contact information (telephone numbers, e-mail address, etc.)

[15] 33 C.F.R., part 159 (Marine Sanitation Devices)
[16] August 29, 1994, DEP's Regulatory Jurisdiction Memo
[17] Alan Richard (past Chair of the Florida Bar's Admiralty Law Committee and Florida State University, College of Law, Adjunct Professor of Admiralty and Maritime Law) e-mail, March 21, 2006

- Agent identification
- Name, port of registry, passenger and crew capacity of each vessel
- Description of all waste treatment systems for each vessel

Required Waste Releases

The bill requires all sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, or biomedical waste from any gambling vessel shall be held for release until return to a port facility in accordance with the procedures of the port facility.

The bill authorizes port authorities to establish procedures including a verification process of the contents released for the release of sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, or biomedical waste from gambling vessels at port facilities. The bill also authorizes port authorities to establish and collect a fee not to exceed the costs associated with disposal of the required releases from gambling vessels. There are 14 ports in operation in Florida and approximately 10 gambling vessels operating from various Florida ports which may be impacted by this bill. In addition, the bill appears to be applicable only to those gambling vessels which return to "port facilities;" there also may be gambling vessels which operate from "non-port facilities."

Prohibited Waste Releases

The bill prohibits an owner or operator of a gambling vessel from releasing any sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, or biomedical waste from the vessel into coastal waters. In the event a gambling vessel releases any of the prohibited waste releases, the owner or operator is required to notify DEP immediately, but not later than 24 hours after the release and convey the following information:

- Date of the release
- Time of the release
- Location of the release
- Volume of the release
- Source of the release
- Remedial actions taken to prevent future releases

Penalties

The bill provides that a person who violates the prohibition on disposal of such waste is subject to a civil penalty of not more than $25,000 per violation and instructs the court to take into consideration all relevant circumstances associated with the violation.

The bill authorizes DEP to adopt rules to implement and administer the provisions provided for in the bill.

C. SECTION DIRECTORY:

Section 1. Creates s. 376.25, F.S., relating to regulation of releases from gambling vessels.

Section 2. Provides the act will take effect January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures:

DEP reports the overall cost of implementing the required annual registration program is unknown. In addition, DEP estimates that at least two new Environmental Specialist III level staff positions would be required to implement the provisions of this bill, which would require an annual appropriation of approximately $110,000.[18]

The rulemaking expense required by the bill would be approximately $10,000.[19]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires gambling vessel owners to pay the cost of compiling and providing registration information to DEP, which is presumably readily available as it is used for other purposes and, thus, relatively inexpensive to provide. The owners also would have to pay whatever fees port facilities charge to dispose of the wastes that their vessels release at those facilities. The cost of disposal and the potential fee is unknown.[20]

The actual cost of on-board waste management facilities is unknown; it would be case-specific, depending on the size of the vessel, number of passengers, and other factors. However, it is assumed that responsible vessel owners are outfitted with waste management facilities and that appropriate upgrades, if any, would represent a relatively small cost when compared with gambling revenues.[21]

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

The bill appears to regulate certain waste disposal related solely to "gambling vessels" and "port facilities." The scope of the bill may need to be expanded to include "all vessels" and "all docking facilities" in order to capture all of the gambling vessels. The bill appears to regulate waste disposal which is currently permissible under federal regulations to discharge untreated sewage beyond three nautical miles from shore.

[18] HB 313 DEP Bill Analysis (2006)
[19] Id.
[20] Id.
[21] Id.

B. RULE-MAKING AUTHORITY:

The bill authorizes DEP rulemaking authority to implement and administer the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The gambling vessel industry and DEP may wish to explore entering into a MOU similar to the MOU that the Cruise Ship industry currently operates under with DEP. The waste management practices and procedures contained within the MOU meet or exceed the standards set forth in Florida laws and applicable Florida regulations.

DEP Comments

The improvement of waste and wastewater management practices by all sectors of the boating and shipping industries is a laudable and important objective. Unfortunately, there are a number of problems associated with the proposed legislation.

First, beyond the moral opprobrium some feel gambling warrants, what is the policy justification or constitutional authority, in effect, to single out gambling vessels for their waste management practices while ignoring the same problems on similar vessels that do not house gambling? The issue being addressed and, in a limited sense, regulated by the bill is waste management, not gambling. Yet the extent of the regulation, which could equally apply to other classes of ship-owners with similar or equivalent waste management problems, applies only to gambling vessels.

Assuming the imposition of these requirements solely on gambling vessels is appropriate, the bill provides no resources for DEP to implement a registration program nor any authority to assess registration fees. (It does provide fee authority to ports to underwrite the cost of waste disposal.) Without the resources, the program will have no value.

There is no definition of "port" or "port authority" in chapter 376, F.S. Is the meaning of these terms clear in this context? Presumably, they are intended to have the same meaning as in Title XXII, Florida Statutes.

May want to increase civil penalty amount to not more than $50,000 to be consistent with section 403.722(3)(a), F.S., since hazardous waste is included.

Comments by Alan Richard, (past Chair of the Florida Bar's Admiralty Law Committee and Florida State University, Adjunct Professor of Admiralty and Maritime Law):

This is in response to committee's staff request for my written comments on the bill as it relates to maritime law. Please remember that the Fish and Wildlife Conservation Commission, sitting as agency head, has not had the opportunity to review these comments. As such, they represent my professional opinion only and should not be attributed to the agency. These comments are written from my personal perspective as a member and past Chair of the Florida Bar's Admiralty Law Committee and as an Adjunct Professor of Admiralty and Maritime Law.

House Bill 313 defines the term "gambling vessel" and imposes regulations upon such vessels. The regulations include provisions prohibiting releasing into coastal waters: sewage; treated or untreated graywater; treated or untreated blackwater; oily bilge water; hazardous waste; or biomedical waste. The bill also requires that gambling vessels retain all of such substances on board until return to a port facility where these substances must be discharged in accordance with the port facilities established procedures. Other provisions include registration requirements for gambling vessels, rulemaking requirements for the Department of Environmental Protection, and the establishment by port authorities of procedures for receiving the discharge of those listed substances.

From a maritime law perspective, the bill is problematic with regard to these issues:

- It is, in part, redundant to existing federal law and regulations.
- It is, in part, preempted by or in conflict with existing federal regulations.
- If it is to apply only within Florida's territorial boundaries, it is redundant in part to existing state law.
- If it is to apply upon the high seas beyond Florida's territorial boundaries, it is internally inconsistent and its extraterritorial effect is not stated with sufficient clarity to overcome this ambiguity and the attendant invocation of the rule of lenity.

The provisions of this bill are redundant to federal laws and regulations that already prohibit most of what this bill prohibits. For example, it is unlawful for any vessel subject to the jurisdiction of the United States to discharge oil (including oily bilge water) or any hazardous substance into internal or coastal waters. Of note, the definition of "coastal waters" includes the federal Exclusive Economic Zone, which encompasses waters up to 200 nautical miles out to sea. See, Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq.; Act to Prevent Pollution from Ships, 1980, as amended, 33 U.S.C. §§ 1901–1911; 33 C.F.R. subchapter O. Discharge of trash or garbage, from plastics to food scraps, is also substantially regulated at the federal level by statutes and regulations adopting and implementing Annexes I, II and V of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78), done at London on February 17, 1978. The penalties for violation are substantial. The statute provides for penalties of up to $25,000 per day with a minimum mandatory penalty of $100,000 for grossly negligent discharges. See, 33 U.S.C. § 1321. For intentional discharges or attempts to conceal discharges, the penalties can be enormous. See, U.S. Department of Justice, "Fair Voyager" press release, http://www.usdoj.gov/usao/nys/ Press%20Releases/JULY%2005/Fair%20Voyager%20press%20release.pdf (July 14, 2005) ($1.5 million in fines, community service, and four years probation).

Of more significance are the conflicts between the bill and existing federal law or regulation. For example, the discharge of oily water at sea is federally prohibited, but only for discharges containing more than 15 parts per million of oil. See, 33 C.F.R. § 151.10. Within the internal navigable waters of the United States, all discharges of oil or oily mixtures are governed by the Federal Water Pollution Control Act as implemented pursuant to 40 C.F.R. part 110. Discharges of oil permitted under Annex I of MARPOL are expressly permitted under the federal rule. These permissible discharges include, but are not limited to "discharges of oil from a properly functioning vessel engine . . . and any discharges of such oil accumulated in the bilges of a vessel discharged in compliance with MARPOL 73/78, Annex I, as provided in 33 CFR part 151, subpart A." 40 C.F.R. § 110.5.

Similarly, the discharge of sewage is substantially regulated at the federal level and Congress has expressly prohibited states from imposing additional regulations on vessels. See, 33 U.S.C. § 1322 ("no State or political subdivision thereof shall adopt or enforce any statute or regulation of such State or political subdivision with respect to the design, manufacture, or installation or use of any marine sanitation device on any vessel subject to the provisions of this section"). The statute, and the rules implementing the statute, specifically allow the discharge of sewage treated to specifications set forth in the Coast Guard's rules. Moreover, it is permissible under the federal regulations to discharge untreated sewage beyond three nautical miles from shore. See generally, 33 C.F.R. part 159 (Marine Sanitation Devices). Finally, sewage from vessels, within the meaning of 33 U.S.C. § 1322, is specifically excluded from the definition of "pollutant." See, 33 U.S.C. § 1362.

Given the above, the courts are most likely to find that the provisions in the bill prohibiting the discharge of oily water or sewage treated to the requisite standards, and the discharge of untreated sewage beyond three miles from shore to be preempted and unenforceable. See, U.S. v. Locke, 529 U.S. 89, 120 S. Ct. 1135, 146 L. Ed. 2d 69 (2000).

The prohibition against the discharge of graywater is also problematic. The bill defines "graywater" as being a part of sewage coming from sinks, baths, lavatories, and laundry. Federal law, however, only include graywater within the definition of sewage for commercial vessels on the Great Lakes. See, 33 U.S.C. § 1322(6). The implication arising from this under the rules of statutory construction is that graywater is not a constituent part of sewage anywhere other than on the Great Lakes. The courts in

Florida "have generally recognized the principle of statutory construction, expressio unius est exclusio alterius _ the mention of one thing implies the exclusion of another." Rotemi Realty, Inc. v. Act Realty Co., Inc. 911 So.2d 1181, 1187 (Fla. 2005); accord, Grenitz v. Tomlian, 858 So.2d 999, 1002 (Fla. 2003); Moonlit Waters Apartments, Inc. v. Cauley, 666 So.2d 898, 900 (Fla. 1996). Therefore, defining of graywater as a constituent part of sewage is likely to fail.

The other issue of federal preemption or conflict as it pertains to graywater is that federal rules implementing the National Pollutant Discharge Elimination System categorically exclude graywater from the NPDES permitting requirements under the Clean Water Act. See, 40 C.F.R. § 122.3(a). Under the rules, all discharges of laundry, shower, and galley sink wastes and all other discharges incidental to the normal operation of a vessel are permissible and exempt from NPDES permitting. In the absence of particularized and overriding local need outweighing the need for uniformity of regulation, it is likely that courts will strike down this portion of the statute. Given the broad geographic scope of the bill and given that the requirement will apply only to gambling vessels and not to other vessels arguably generating substantially more bath, lavatory, and dishwashing effluent, it is unlikely that a particularized necessity can be demonstrated.

Within Florida's geographic boundaries most provisions of the bill not preempted by or in conflict with federal law are already in place. Discharge of oil and other pollutants is prohibited under current state law. § 376.041, Fla. Stat. For this purpose, the term "discharge" includes, but is not limited to, "any spilling, leaking, seeping, pouring, emitting, emptying, or dumping." § 376.031(7), Fla. Stat. Not only does the provision cover discharges which occur within Florida's territorial limits, the statute has explicit extraterritorial effect if the discharge "affects lands and waters within the territorial limits of the state." Id. Penalties for discharging oil or other pollutants range up to $50,000 per day. § 376.16, Fla. Stat. Violators are liable for cleanup costs, § 376.12, Fla. Stat., and can be required to compensate the state for any damage done to the state's natural resources. §§ 376.12(4), 376.121, Fla. Stat.

Similarly, it is already a violation of state law to discharge untreated sewage. §§ 327.53(4), 403.413(5), Fla. Stat. Discharge of untreated sewage from a commercial vessel is presumptively done for a commercial purpose, § 403.413(6)(g), Fla. Stat., and is a felony of the third degree. § 403.413(6)(j), Fla Stat. Violations of the federal regulations pertaining to marine sanitation devices are also sanctionable under color of state law. See, § 327.53(5), Fla. Stat. Although in theory these provisions apply beyond the territorial limits of the state (the waters of this state include "the high seas when navigated as a part of a journey or ride to or from the shore of this state" § 327.02(38), Fla. Stat.), the extraterritorial effect is not significant because the federal regulations enforceable under the state statute do not apply beyond three nautical miles from shore.

The bill's prohibition of the discharge of solid waste, including hazardous waste, is also redundant to the existing prohibitions under state law. The penalties for discharging solid waste from a vessel into state waters include civil penalties of up to $10,000 per day, § 403.121(1)(b), Fla., Stat. The Department of Environmental protection may also assess administrative penalties of $2,000 per day, plus another $1,000 because the waste is placed in a water body, plus another $1,000 if the waste is untreated biomedical waste. § 403.121(3)(e), Fla. Stat. The disposal of hazardous wastes is tightly regulated under part IV of chapter 403, Florida Statutes, and disposal violations are similarly severely sanctioned.

Finally, there is an ambiguity in the bill that is likely to cause enforcement problems. Releases of the listed substances are prohibited within "coastal waters," waters the bill defines as being "waters of the Atlantic Ocean or the Gulf of Mexico within the jurisdiction of the state." The bill also, however, requires that: "All sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, or biomedical waste from any gambling vessel shall be held for release until return to a port facility." The bill is not explicit about releases beyond the state's territorial limits.

"[T]he state can regulate and control the operation of vessels and the acts of its citizens in waters outside Florida's territorial limits, provided, however, that the federal government has not preempted state regulation." See, Skiriotes v. Florida, 313 U.S. 69, 61 S.Ct. 924, 85 L.Ed. 1193 (1941). That doctrine was well established more than a century ago. See, Old Dominion S.S. Co. v. Gilmore, 207 U.S. 398, 28 S.Ct. 133, 52 L.Ed. 264 (1907). Where there is potential for conflict or preemption, an explicit statement of extraterritorial effect is necessary. "[I]f there is to be a confrontation between the

state and the federal government, then the legislature should expressly declare that it is its intent that the statute apply in extraterritorial waters." Southeastern Fisheries Ass'n, Inc. v. Department of Natural Resources, 453 So.2d 1351, 1355 (Fla. 1984). "Extraterritorial effect of an enactment is not to be found by implication." Burns v. Rozen, 201 So.2d 629, 631 (Fla. 1st DCA 1967). It is, therefore, likely that enforcement of this bill beyond the territorial limits of the state would be impossible as the bill is presently drafted.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

A bill to be entitled

An act relating to regulation of releases from gambling vessels; creating s. 376.25, F.S.; providing a short title; providing definitions; requiring gambling vessels operating in coastal waters to register with the Department of Environmental Protection; specifying the requirements for vessel registration; requiring gambling vessels to release certain substances upon return to a port facility; requiring port authorities to establish procedures for the release of certain substances by gambling vessels at port facilities; requiring port authorities to establish and collect certain fees; prohibiting the release of certain substances into coastal waters by gambling vessels; requiring violations to be reported; providing civil penalties for violations; providing exemptions; requiring the department to adopt rules to implement and administer the section; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 376.25, Florida Statutes, is created to read:

376.25 Gambling vessels; registration; required and prohibited releases.--

(1) SHORT TITLE.--This section may be cited as the "Clean Ocean Act."

(2) DEFINITIONS.--As used in this section:

(a) "Biomedical waste" means any solid or liquid waste as defined in s. 381.0098(2)(a).

(b) "Coastal waters" means waters of the Atlantic Ocean or the Gulf of Mexico within the jurisdiction of the state.

(c) "Department" means the Department of Environmental Protection.

(d) "Gambling" or "gambling device" means any game of chance and includes, but is not limited to, cards, keno, roulette, faro, slot machines, video poker, or blackjack machines played for money or thing of value. The term "gambling" does not include penny-ante games, as defined in s. 849.085(2)(a).

(e) "Gambling vessel" means a boat, ship, casino boat, watercraft, or barge kept, operated, or maintained for the purpose of gambling and that carries or operates gambling devices for the use of its passengers or otherwise provides facilities for the purpose of gambling, whether within or without the jurisdiction of this state, and whether it is anchored, berthed, lying to, or navigating, and the sailing, voyaging, or cruising, or any segment of the sailing, voyaging, or cruising begins and ends within this state.

(f) "Hazardous waste" means any solid waste as defined in s. 403.703(21).

(g) "Oily bilge water" means bilge water that contains used lubrication oils, oil sludge and slops, fuel and oil sludge, used oil, used fuel and fuel filters, and oily waste.

(h) "Release" means any discharge of liquids or solids, however caused, from a gambling vessel and includes any escape, disposal, spilling, leaking, pumping, emitting, or emptying.

(i) "Sewage" means human body waste and the waste from toilets and other receptacles intended to receive or retain human body waste and includes any material that has been collected or treated through a marine sanitation device, as that term is used in Section 312 of the Clean Water Act, 33 U.S.C. s. 1322, or that is a byproduct of sewage treatment.

(j) "Treated blackwater" means that part of treated sewage carried off by toilets, urinals, and kitchen drains.

(k) "Treated graywater" means that part of treated sewage that is not blackwater, including waste from the bath, lavatory, laundry, and sink, except kitchen sink waste.

(l) "Untreated blackwater" means that part of untreated sewage carried off by toilets, urinals, and kitchen drains.

(m) "Untreated graywater" means that part of untreated sewage that is not blackwater, including waste from the bath, lavatory, laundry, and sink, except kitchen sink waste.

(3) REGISTRATION REQUIREMENTS.--

(a) For each calendar year in which the owner or operator of a gambling vessel intends to operate, or cause or allow to be operated, the gambling vessel in coastal waters, the owner or operator of the vessel shall register with the department. The registration shall be completed before any commercial passenger vessel of the owner or operator enters the marine waters of the state in that calendar year. The registration shall include the following information:

1. The vessel owner's business name, and, if different, the vessel operator's business name for each gambling vessel of the owner or operator that is scheduled to be in coastal waters during the calendar year.

2. The postal address, e-mail address, telephone number, and facsimile number for the principal place of each business identified in subparagraph 1.

3. The name and address of an agent for service of process for each business identified under subparagraph 1. The owner and operator shall continuously maintain a designated agent for service of process whenever a gambling vessel of the owner or operator is in coastal waters, and the agent shall be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in and authorized to do business in this state.

4. The name or call sign, port of registry, and passenger and crew capacity for each of the owner's or operator's vessels scheduled either to call upon a port in this state or otherwise to be in coastal waters during the calendar year and after the date of registration.

5. The description of all waste treatment systems for each vessel identified under subparagraph 4., including system type, design, operation, location of all discharge pipes and valves, and number and capacity of all storage areas and holding tanks.

(b) Registration under paragraph (a) shall be executed under oath by the owner or operator or designated representative thereof.

(c) Upon request of the department, the registrant shall submit registration information required under this subsection electronically.

(4) REQUIRED RELEASES.--

(a) All sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, or biomedical waste from any gambling vessel shall be held for release until return to a port facility.

(b) Upon return to a port facility, gambling vessels shall release all sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, and biomedical waste in accordance with the procedures of the port facility.

(c) Port authorities shall establish procedures, including a process for verification of the contents released, for the release of sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, and biomedical waste from gambling vessels at port facilities.

(d) Port authorities shall establish and collect a fee not to exceed the costs associated with disposal of the required releases from gambling vessels.

(5) PROHIBITED RELEASES.--

(a) An owner or operator of a gambling vessel may not release, or permit anyone to release, any sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, or biomedical waste from the vessel into coastal waters.

(b) If a gambling vessel releases any sewage, oily bilge water, untreated or treated graywater, untreated or treated blackwater, hazardous waste, or biomedical waste into coastal waters, the owner or operator shall immediately, but no later than 24 hours after the release, notify the department of the release. The owner or operator shall include all of the following information in the notification:

1. Date of the release.

2. Time of the release.

3. Location of the release.

4. Volume of the release.

5. Source of the release.

6. Remedial actions taken to prevent future releases.

(6) PENALTIES.--

(a) A person who violates this section is subject to a civil penalty of not more than $25,000 for each violation.

(b) The civil penalty imposed for each separate violation of this section is separate from, and in addition to, any other civil penalty imposed for a separate violation under this subsection or any other provision of law.

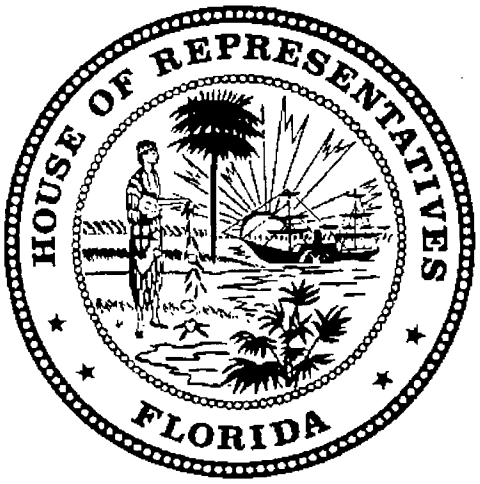
(c) In determining the amount of a civil penalty imposed under this subsection, the court shall take into consideration all relevant circumstances, including, but not limited to, the nature, circumstances, extent, and gravity of the violation. In making this determination, the court shall consider the degree of toxicity and volume of the release, the extent of harm caused by the violation, whether the effects of the violation may be reversed or mitigated, and, with respect to the defendant, the

ability to pay, the effect of a civil penalty on the ability to continue in business, all voluntary cleanup efforts undertaken, the prior history of violations, the gravity of the behavior, the economic benefit, if any, resulting from the violation, and all other matters the court determines justice may require.

(7) APPLICABILITY.--This section does not apply to releases made for the purpose of securing the safety of the gambling vessel or saving life at sea if all reasonable precautions have been taken for the purpose of preventing or minimizing the release.

(8) RULES.--The department shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and administer this section.

Section 2. This act shall take effect January 1, 2007.



Committee on Environmental Regulation

Wednesday, April 5, 2006
1:30 – 3:00 PM
212 Knott

Addendum A (04.04.06, 4:00 p.m.)

Allan G. Bense
Speaker

Mitch Needelman
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1359**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Environmental Regulation Committee

Representative(s) Benson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (3) of section 161.085, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

161.085 Rigid coastal armoring structures.--

(3) If erosion occurs as a result of a storm event which threatens private structures or public infrastructure and a permit has not been issued pursuant to subsection (2), unless the authority has been revoked by order of the department pursuant to subsection (8), an ~~the~~ agency, political subdivision, or municipality having jurisdiction over the impacted area may install or authorize installation of rigid coastal armoring structures for the protection of private structures or public infrastructure, or take other measures to relieve the threat to private structures or public infrastructure as long as the following items are considered and incorporated into such emergency measures:

(a) Protection of the beach-dune system.

(b) Siting and design criteria for the protective structure.

(c) Impacts on adjacent properties.

(d) Preservation of public beach access.

(e) Protection of native coastal vegetation and nesting marine turtles and their hatchlings.

(8) If an agency, political subdivision, or municipality installs or authorizes installation of a rigid coastal armoring structure that does not comply with subsection (3), and if the department determines that the action harms or interferes with the protection of the beach-dune system, adversely impacts adjacent properties, interferes with public beach access, or harms native coastal vegetation or nesting marine turtles or their hatchlings, the department may revoke by order the authority of the agency, political subdivision, or municipality under subsection (3) to install or authorize the installation of rigid coastal armoring structures.

Section 2. Paragraph (h) of subsection (2) of section 163.3178, Florida Statutes, is amended to read:

163.3178 Coastal management.--

(2) Each coastal management element required by s. 163.3177(6)(g) shall be based on studies, surveys, and data; be consistent with coastal resource plans prepared and adopted pursuant to general or special law; and contain:

(h) Designation of coastal high-hazard ~~coastal~~ areas and the criteria for mitigation for a comprehensive plan amendment in the coastal high hazard area as defined in s. 163.3178(9). ~~, which for uniformity and planning purposes herein, are defined as category 1 evacuation zones.~~ The Coastal High Hazard Area is the area below the elevation of the Category 1 storm surge line

as established by a Sea, Lake and Overland Surges (SLOSH) computerized storm surge model. ~~However, Application of mitigation~~ The application for development and redevelopment policies, pursuant to s. 380.27(2), and any rules adopted thereunder, shall be at the discretion of local government.

(9) (a) A proposed comprehensive plan amendment shall be found in compliance with state coastal high hazard standards as provided in rule 9J-5.012(3)(b)(6) and (7) if:

(i) the adopted level of service for out-of-county hurricane evacuation is maintained; or

(ii) a 12 hour evacuation time to shelter is maintained and shelter space reasonably attributable to the development contemplated by a proposed comprehensive plan amendment is available; or

(iii) appropriate mitigation to satisfy the provisions of either (i) or (ii) is provided. Appropriate mitigation shall include, without limitation, payment of money, contribution of land and construction of hurricane shelters and transportation facilities.

Required mitigation shall not exceed the amount required for a developer to accommodate impacts reasonably attributable to its development. For those local governments that have not established a level of service for out of county hurricane evacuation by July 1, 2008, the level of service shall be no greater than 16 hours.

(b) No new adult congregate living facilities, community residential homes, group homes, homes for the aged, hospitals, or nursing homes shall be located within the coastal high hazard area.

(c) This section shall become effective immediately and apply to all local governments. No later than July 1, 2008, local government shall amend their Future Land Use Map and coastal management element to include the new definition of coastal high hazard, the coastal high hazard map, and the appropriate mitigation strategies.

Section 3. Subsection (2), paragraph (d) of section 163.3178, Florida Statutes, is amended to read:

(d) A component which outlines principles for hazard mitigation and protection of human life against the effects of natural disaster, including population evacuation, which take into consideration the capability to safely evacuate the density of coastal population proposed in the future land use plan element in the event of an impending natural disaster. The Division of Emergency Management shall manage the update of the regional hurricane evacuation studies, ensure such studies are done in a consistent manner, and ensure that the methodology used for modeling storm surge is that used by the National Hurricane Center.

Section 4. Subsection (4) of section 381.0065, Florida Statutes, is amended to read:

381.0065 Onsite sewage treatment and disposal systems; regulation.--

(4) PERMITS; INSTALLATION; AND CONDITIONS.--A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection, except that the issuance of a permit for work seaward of the coastal construction control

line established under s. 161.053 shall be contingent upon receipt of any required coastal construction control line permit from the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste. Buildings or establishments that use an aerobic treatment unit or generate commercial waste shall be inspected by the department at least annually to assure compliance with the terms of the operating permit. The operating permit for a commercial wastewater system is valid for 1 year from the date of issuance and must be renewed annually. The operating permit for an aerobic treatment unit is valid for 2 years from the date of issuance and must be renewed every 2 years. If all information pertaining to the siting, location, and installation conditions or repair of an onsite sewage treatment and disposal system remains the same, a construction or repair permit for the onsite sewage treatment and disposal system may be transferred to another person, if the transferee files, within 60 days after the transfer of ownership, an amended application providing all corrected information and proof of ownership of the property. There is no fee associated with the processing of this supplemental information. A person may not contract to construct, modify, alter, repair, service, abandon, or maintain any portion of an onsite sewage treatment and disposal system without being registered under part III of chapter 489. A property owner who personally performs construction, maintenance, or repairs to a system serving his or her own owner-occupied single-family

residence is exempt from registration requirements for performing such construction, maintenance, or repairs on that residence, but is subject to all permitting requirements. A municipality or political subdivision of the state may not issue a building or plumbing permit for any building that requires the use of an onsite sewage treatment and disposal system unless the owner or builder has received a construction permit for such system from the department. A building or structure may not be occupied and a municipality, political subdivision, or any state or federal agency may not authorize occupancy until the department approves the final installation of the onsite sewage treatment and disposal system. A municipality or political subdivision of the state may not approve any change in occupancy or tenancy of a building that uses an onsite sewage treatment and disposal system until the department has reviewed the use of the system with the proposed change, approved the change, and amended the operating permit.

(a) Subdivisions and lots in which each lot has a minimum area of at least one-half acre and either a minimum dimension of 100 feet or a mean of at least 100 feet of the side bordering the street and the distance formed by a line parallel to the side bordering the street drawn between the two most distant points of the remainder of the lot may be developed with a water system regulated under s. 381.0062 and onsite sewage treatment and disposal systems, provided the projected daily sewage flow does not exceed an average of 1,500 gallons per acre per day, and provided satisfactory drinking water can be obtained and all distance and setback, soil condition, water table elevation, and other related requirements of this section and rules adopted under this section can be met.

(b) Subdivisions and lots using a public water system as defined in s. 403.852 may use onsite sewage treatment and disposal systems, provided there are no more than four lots per acre, provided the projected daily sewage flow does not exceed an average of 2,500 gallons per acre per day, and provided that all distance and setback, soil condition, water table elevation, and other related requirements that are generally applicable to the use of onsite sewage treatment and disposal systems are met.

(c) Notwithstanding the provisions of paragraphs (a) and (b), for subdivisions platted of record on or before October 1, 1991, when a developer or other appropriate entity has previously made or makes provisions, including financial assurances or other commitments, acceptable to the Department of Health, that a central water system will be installed by a regulated public utility based on a density formula, private potable wells may be used with onsite sewage treatment and disposal systems until the agreed-upon densities are reached. The department may consider assurances filed with the Department of Business and Professional Regulation under chapter 498 in determining the adequacy of the financial assurance required by this paragraph. In a subdivision regulated by this paragraph, the average daily sewage flow may not exceed 2,500 gallons per acre per day. This section does not affect the validity of existing prior agreements. After October 1, 1991, the exception provided under this paragraph is not available to a developer or other appropriate entity.

(d) Paragraphs (a) and (b) do not apply to any proposed residential subdivision with more than 50 lots or to any proposed commercial subdivision with more than 5 lots where a publicly owned or investor-owned sewerage system is available. It is the intent of this paragraph not to allow development of

additional proposed subdivisions in order to evade the requirements of this paragraph.

(e) Onsite sewage treatment and disposal systems must not be placed closer than:

1. Seventy-five feet from a private potable well.

2. Two hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of greater than 2,000 gallons per day.

3. One hundred feet from a public potable well serving a residential or nonresidential establishment having a total sewage flow of less than or equal to 2,000 gallons per day.

4. Fifty feet from any nonpotable well.

5. Ten feet from any storm sewer pipe, to the maximum extent possible, but in no instance shall the setback be less than 5 feet.

6. Seventy-five feet from the mean high-water line of a tidally influenced surface water body.

7. Seventy-five feet from the mean annual flood line of a permanent nontidal surface water body.

8. Fifteen feet from the design high-water line of retention areas, detention areas, or swales designed to contain standing or flowing water for less than 72 hours after a rainfall or the design high-water level of normally dry drainage ditches or normally dry individual lot stormwater retention areas.

(f) Except as provided under paragraphs (e) and (t), no limitations shall be imposed by rule, relating to the distance between an onsite disposal system and any area that either permanently or temporarily has visible surface water.

(g) All provisions of this section and rules adopted under this section relating to soil condition, water table elevation,

distance, and other setback requirements must be equally applied to all lots, with the following exceptions:

1. Any residential lot that was platted and recorded on or after January 1, 1972, or that is part of a residential subdivision that was approved by the appropriate permitting agency on or after January 1, 1972, and that was eligible for an onsite sewage treatment and disposal system construction permit on the date of such platting and recording or approval shall be eligible for an onsite sewage treatment and disposal system construction permit, regardless of when the application for a permit is made. If rules in effect at the time the permit application is filed cannot be met, residential lots platted and recorded or approved on or after January 1, 1972, shall, to the maximum extent possible, comply with the rules in effect at the time the permit application is filed. At a minimum, however, those residential lots platted and recorded or approved on or after January 1, 1972, but before January 1, 1983, shall comply with those rules in effect on January 1, 1983, and those residential lots platted and recorded or approved on or after January 1, 1983, shall comply with those rules in effect at the time of such platting and recording or approval. In determining the maximum extent of compliance with current rules that is possible, the department shall allow structures and appurtenances thereto which were authorized at the time such lots were platted and recorded or approved.

2. Lots platted before 1972 are subject to a 50-foot minimum surface water setback and are not subject to lot size requirements. The projected daily flow for onsite sewage treatment and disposal systems for lots platted before 1972 may not exceed:

a. Two thousand five hundred gallons per acre per day for lots served by public water systems as defined in s. 403.852.

b. One thousand five hundred gallons per acre per day for lots served by water systems regulated under s. 381.0062.

(h)1. The department may grant variances in hardship cases which may be less restrictive than the provisions specified in this section. If a variance is granted and the onsite sewage treatment and disposal system construction permit has been issued, the variance may be transferred with the system construction permit, if the transferee files, within 60 days after the transfer of ownership, an amended construction permit application providing all corrected information and proof of ownership of the property and if the same variance would have been required for the new owner of the property as was originally granted to the original applicant for the variance. There is no fee associated with the processing of this supplemental information. A variance may not be granted under this section until the department is satisfied that:

a. The hardship was not caused intentionally by the action of the applicant;

b. No reasonable alternative, taking into consideration factors such as cost, exists for the treatment of the sewage; and

c. The discharge from the onsite sewage treatment and disposal system will not adversely affect the health of the applicant or the public or significantly degrade the groundwater or surface waters.

Where soil conditions, water table elevation, and setback provisions are determined by the department to be satisfactory,

special consideration must be given to those lots platted before 1972.

2. The department shall appoint and staff a variance review and advisory committee, which shall meet monthly to recommend agency action on variance requests. The committee shall make its recommendations on variance requests at the meeting in which the application is scheduled for consideration, except for an extraordinary change in circumstances, the receipt of new information that raises new issues, or when the applicant requests an extension. The committee shall consider the criteria in subparagraph 1. in its recommended agency action on variance requests and shall also strive to allow property owners the full use of their land where possible. The committee consists of the following:

a. The Division Director for Environmental Health of the department or his or her designee.

b. A representative from the county health departments.

c. A representative from the home building industry recommended by the Florida Home Builders Association.

d. A representative from the septic tank industry recommended by the Florida Onsite Wastewater Association.

e. A representative from the Department of Environmental Protection.

f. A representative from the real estate industry who is also a developer in this state who develops lots using onsite sewage treatment and disposal systems, recommended by the Florida Association of Realtors.

g. A representative from the engineering profession recommended by the Florida Engineering Society.

Members shall be appointed for a term of 3 years, with such appointments being staggered so that the terms of no more than two members expire in any one year. Members shall serve without remuneration, but if requested, shall be reimbursed for per diem and travel expenses as provided in s. 112.061.

(i) A construction permit may not be issued for an onsite sewage treatment and disposal system in any area zoned or used for industrial or manufacturing purposes, or its equivalent, where a publicly owned or investor-owned sewage treatment system is available, or where a likelihood exists that the system will receive toxic, hazardous, or industrial waste. An existing onsite sewage treatment and disposal system may be repaired if a publicly owned or investor-owned sewerage system is not available within 500 feet of the building sewer stub-out and if system construction and operation standards can be met. This paragraph does not require publicly owned or investor-owned sewerage treatment systems to accept anything other than domestic wastewater.

1. A building located in an area zoned or used for industrial or manufacturing purposes, or its equivalent, when such building is served by an onsite sewage treatment and disposal system, must not be occupied until the owner or tenant has obtained written approval from the department. The department shall not grant approval when the proposed use of the system is to dispose of toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals.

2. Each person who owns or operates a business or facility in an area zoned or used for industrial or manufacturing purposes, or its equivalent, or who owns or operates a business that has the potential to generate toxic, hazardous, or industrial wastewater or toxic or hazardous chemicals, and uses

an onsite sewage treatment and disposal system that is installed on or after July 5, 1989, must obtain an annual system operating permit from the department. A person who owns or operates a business that uses an onsite sewage treatment and disposal system that was installed and approved before July 5, 1989, need not obtain a system operating permit. However, upon change of ownership or tenancy, the new owner or operator must notify the department of the change, and the new owner or operator must obtain an annual system operating permit, regardless of the date that the system was installed or approved.

3. The department shall periodically review and evaluate the continued use of onsite sewage treatment and disposal systems in areas zoned or used for industrial or manufacturing purposes, or its equivalent, and may require the collection and analyses of samples from within and around such systems. If the department finds that toxic or hazardous chemicals or toxic, hazardous, or industrial wastewater have been or are being disposed of through an onsite sewage treatment and disposal system, the department shall initiate enforcement actions against the owner or tenant to ensure adequate cleanup, treatment, and disposal.

(j) An onsite sewage treatment and disposal system for a single-family residence that is designed by a professional engineer registered in the state and certified by such engineer as complying with performance criteria adopted by the department must be approved by the department subject to the following:

1. The performance criteria applicable to engineer-designed systems must be limited to those necessary to ensure that such systems do not adversely affect the public health or significantly degrade the groundwater or surface water. Such performance criteria shall include consideration of the quality

of system effluent, the proposed total sewage flow per acre, wastewater treatment capabilities of the natural or replaced soil, water quality classification of the potential surface-water-receiving body, and the structural and maintenance viability of the system for the treatment of domestic wastewater. However, performance criteria shall address only the performance of a system and not a system's design.

2. The technical review and advisory panel shall assist the department in the development of performance criteria applicable to engineer-designed systems.

3. A person electing to utilize an engineer-designed system shall, upon completion of the system design, submit such design, certified by a registered professional engineer, to the county health department. The county health department may utilize an outside consultant to review the engineer-designed system, with the actual cost of such review to be borne by the applicant. Within 5 working days after receiving an engineer-designed system permit application, the county health department shall request additional information if the application is not complete. Within 15 working days after receiving a complete application for an engineer-designed system, the county health department either shall issue the permit or, if it determines that the system does not comply with the performance criteria, shall notify the applicant of that determination and refer the application to the department for a determination as to whether the system should be approved, disapproved, or approved with modification. The department engineer's determination shall prevail over the action of the county health department. The applicant shall be notified in writing of the department's determination and of the applicant's rights to pursue a variance or seek review under the provisions of chapter 120.

4. The owner of an engineer-designed performance-based system must maintain a current maintenance service agreement with a maintenance entity permitted by the department. The maintenance entity shall obtain a biennial system operating permit from the department for each system under service contract. The department shall inspect the system at least annually, or on such periodic basis as the fee collected permits, and may collect system-effluent samples if appropriate to determine compliance with the performance criteria. The fee for the biennial operating permit shall be collected beginning with the second year of system operation. The maintenance entity shall inspect each system at least twice each year and shall report quarterly to the department on the number of systems inspected and serviced.

5. If an engineer-designed system fails to properly function or fails to meet performance standards, the system shall be re-engineered, if necessary, to bring the system into compliance with the provisions of this section.

(k) An innovative system may be approved in conjunction with an engineer-designed site-specific system which is certified by the engineer to meet the performance-based criteria adopted by the department.

(l) For the Florida Keys, the department shall adopt a special rule for the construction, installation, modification, operation, repair, maintenance, and performance of onsite sewage treatment and disposal systems which considers the unique soil conditions and which considers water table elevations, densities, and setback requirements. On lots where a setback distance of 75 feet from surface waters, saltmarsh, and buttonwood association habitat areas cannot be met, an injection well, approved and permitted by the department, may be used for

disposal of effluent from onsite sewage treatment and disposal systems.

(m) No product sold in the state for use in onsite sewage treatment and disposal systems may contain any substance in concentrations or amounts that would interfere with or prevent the successful operation of such system, or that would cause discharges from such systems to violate applicable water quality standards. The department shall publish criteria for products known or expected to meet the conditions of this paragraph. In the event a product does not meet such criteria, such product may be sold if the manufacturer satisfactorily demonstrates to the department that the conditions of this paragraph are met.

(n) Evaluations for determining the seasonal high-water table elevations or the suitability of soils for the use of a new onsite sewage treatment and disposal system shall be performed by department personnel, professional engineers registered in the state, or such other persons with expertise, as defined by rule, in making such evaluations. Evaluations for determining mean annual flood lines shall be performed by those persons identified in paragraph (2)(i). The department shall accept evaluations submitted by professional engineers and such other persons as meet the expertise established by this section or by rule unless the department has a reasonable scientific basis for questioning the accuracy or completeness of the evaluation.

(o) The department shall appoint a research review and advisory committee, which shall meet at least semiannually. The committee shall advise the department on directions for new research, review and rank proposals for research contracts, and review draft research reports and make comments. The committee is comprised of:

1. A representative of the Division of Environmental Health of the Department of Health.

2. A representative from the septic tank industry.

3. A representative from the home building industry.

4. A representative from an environmental interest group.

5. A representative from the State University System, from a department knowledgeable about onsite sewage treatment and disposal systems.

6. A professional engineer registered in this state who has work experience in onsite sewage treatment and disposal systems.

7. A representative from the real estate profession.

8. A representative from the restaurant industry.

9. A consumer.

Members shall be appointed for a term of 3 years, with the appointments being staggered so that the terms of no more than four members expire in any one year. Members shall serve without remuneration, but are entitled to reimbursement for per diem and travel expenses as provided in s. 112.061.

(p) An application for an onsite sewage treatment and disposal system permit shall be completed in full, signed by the owner or the owner's authorized representative, or by a contractor licensed under chapter 489, and shall be accompanied by all required exhibits and fees. No specific documentation of property ownership shall be required as a prerequisite to the review of an application or the issuance of a permit. The issuance of a permit does not constitute determination by the department of property ownership.

(q) The department may not require any form of subdivision analysis of property by an owner, developer, or subdivider prior

to submission of an application for an onsite sewage treatment and disposal system.

(r) Nothing in this section limits the power of a municipality or county to enforce other laws for the protection of the public health and safety.

(s) In the siting of onsite sewage treatment and disposal systems, including drainfields, shoulders, and slopes, guttering shall not be required on single-family residential dwelling units for systems located greater than 5 feet from the roof drip line of the house. If guttering is used on residential dwelling units, the downspouts shall be directed away from the drainfield.

(t) Notwithstanding the provisions of subparagraph (g)1., onsite sewage treatment and disposal systems located in floodways of the Suwannee and Aucilla Rivers must adhere to the following requirements:

1. The absorption surface of the drainfield shall not be subject to flooding based on 10-year flood elevations. Provided, however, for lots or parcels created by the subdivision of land in accordance with applicable local government regulations prior to January 17, 1990, if an applicant cannot construct a drainfield system with the absorption surface of the drainfield at an elevation equal to or above 10-year flood elevation, the department shall issue a permit for an onsite sewage treatment and disposal system within the 10-year floodplain of rivers, streams, and other bodies of flowing water if all of the following criteria are met:

a. The lot is at least one-half acre in size;

b. The bottom of the drainfield is at least 36 inches above the 2-year flood elevation; and

c. The applicant installs either: a waterless, incinerating, or organic waste composting toilet and a graywater system and drainfield in accordance with department rules; an aerobic treatment unit and drainfield in accordance with department rules; a system approved by the State Health Office that is capable of reducing effluent nitrate by at least 50 percent; or a system approved by the county health department pursuant to department rule other than a system using alternative drainfield materials. The United States Department of Agriculture Soil Conservation Service soil maps, State of Florida Water Management District data, and Federal Emergency Management Agency Flood Insurance maps are resources that shall be used to identify flood-prone areas.

2. The use of fill or mounding to elevate a drainfield system out of the 10-year floodplain of rivers, streams, or other bodies of flowing water shall not be permitted if such a system lies within a regulatory floodway of the Suwannee and Aucilla Rivers. In cases where the 10-year flood elevation does not coincide with the boundaries of the regulatory floodway, the regulatory floodway will be considered for the purposes of this subsection to extend at a minimum to the 10-year flood elevation.

(u) The owner of an aerobic treatment unit system shall maintain a current maintenance service agreement with an aerobic treatment unit maintenance entity permitted by the department. The maintenance entity shall obtain a system operating permit from the department for each aerobic treatment unit under service contract. The maintenance entity shall inspect each aerobic treatment unit system at least twice each year and shall report quarterly to the department on the number of aerobic treatment unit systems inspected and serviced. The owner shall

allow the department to inspect during reasonable hours each aerobic treatment unit system at least annually, and such inspection may include collection and analysis of system-effluent samples for performance criteria established by rule of the department.

(v) The department may require the submission of detailed system construction plans that are prepared by a professional engineer registered in this state. The department shall establish by rule criteria for determining when such a submission is required.

Section 5. This act shall take effect upon becoming a law.

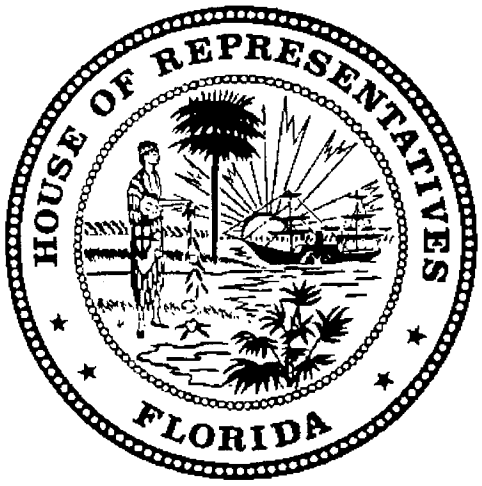
========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

A bill to be entitled

An act relating to hazard mitigation for coastal redevelopment; amending s. 161.085, F.S.; specifying entities that are authorized to install or authorize installation of rigid coastal armoring structures; authorizing the Department of Environmental Protection to revoke certain authority; amending s. 163.3178, F.S.; providing for designation of coastal high hazard areas; providing criteria for mitigation for increased population densities; providing compliance standards; providing a deadline for level of service for out of county hurricane evacuation; restricting new development of certain structures within the coastal high hazard area; providing a deadline for local governments to amend future land use maps; requiring the Division of Emergency Management to manage certain hurricane evacuation studies; requiring that such studies be performed in a specified manner;

606 amending s. 381.0065, F.S.; requiring the issuance of
607 certain permits by the Department of Health to be
608 contingent upon the receipt of certain permits issued by
609 the Department of Environmental Protection; providing an
610 effective date.
611



Committee on Environmental Regulation

Wednesday, April 5, 2006
1:30 – 3:00 PM
212 Knott

Addendum B (04.05.06, 8:15 a.m.)

Allan G. Bense
Speaker

Mitch Needelman
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **1343**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Environmental Regulation Committee

Representative(s) Williams offered the following:

Amendment (with title amendment)

Remove line(s) 136-219 and insert:

In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts are authorized to implement a voluntary statewide programmatic general permit for all dredge and fill activities impacting ten acres or less or wetlands or other surface waters, including navigable waters, subject to agreement with the United States Department of the Army Corps of Engineers in accordance with the following conditions:

(a) By seeking to use the statewide programmatic general permit authorized by this section, an applicant consents to the department or district applying the landward most delineation of wetlands or other surface waters applicable pursuant to this part or the regulations implementing s. 404 of the Clean Water Act, Pub. L. No. 92-500 as amended 33 USC § 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899. In the implementation

of the 1987 Corps of Engineers Wetlands Manual Technical Report (87-1), the department or district shall equate high organic matter in the surface horizon in accordance with the National Resource Conservation Service (NRCS) indications for hydric soils approved for use in Florida. The department shall be responsible for ensuring statewide coordination and consistency in the delineation of surface waters and wetlands pursuant to the statewide programmatic general permit authorized by this part, by providing training and guidance to the department and districts in the implementation of this permit.

(b) By seeking to use the statewide programmatic general permit authorized by this section an applicant consents to applicable substantive federal wetland regulatory criteria, which are not included pursuant to this part, but which are authorized by the regulation implementing s. 404 of the Clean Water Act, Pub. L. No. 92-500 as amended 33 USC § 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899 as required by the Corps of Engineers notwithstanding the provisions of s. 373.4145, F.S., and for the limited purposes of implementing the statewide programmatic general permit authorized by this section.

(c) The department is authorized to adopt rules and apply environmental resource permitting program criteria adopted pursuant to s. 373.414(9) to both waters of the State and isolated wetlands. Upon adoption of these rules, applicants in the Northwest Florida Water Management District can elect to pursue use of the statewide programmatic general permit authorized by this section.

Section 2. Subsection (19) of section 373.4211, Florida Statutes, is amended to read:

(19) Pursuant to s. 373.421, and subject to the conditions described herein, the Legislature ratifies the changes to rule 62-340.450(3), Florida Administrative Code, approved on February 23, 2006, by the Environmental Regulation Commission which add slash pine (pinus elliotti) and gallberry (flex glabral) to the list of facultative plants. However, this ratification and the rule revision shall not become effective until 60 days after the date the statewide programmatic general permit authorized by s. 373.4144(1) becomes effective covering no less than five acres of wetland impact.

(a) Surface water and wetland delineations identified and approved by a permit issued under rules adopted pursuant to this part prior to the effective date of the statewide programmatic general permit authorized by s. 373.4144(1) shall remain valid until expiration of such permit, notwithstanding the changes to rule 62-340.450(3) described in this subsection. For purposes of this paragraph, the term "identified and approved" means:

1. The delineation was field-verified by the permitting agency and such verification was surveyed as part of the application review process for the permit; or

2. The delineation was field-verified by the permitting agency and approved by the permit.

Where surface water and wetland delineations were not identified and approved by the permit issued under rules adopted pursuant to this part, delineations within the geographical area to which such permit applies shall be determined pursuant to the rules applicable at the time the permit was issued, notwithstanding the changes to rule 62-340.450(3) described in this subsection. This paragraph shall also apply to any modification of the

permit issued under rules adopted pursuant to this part within the geographical area to which the permit applies.

(b) Any declaratory statement issued by the department under s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or pursuant to rules adopted thereunder, or by the department or a water management district under s. 373.421, in response to a petition filed on or before the effective date of the statewide programmatic general permit authorized by s. 373.4144(1), shall continue to be valid for the duration of such declaratory statement. Any such petition pending on or before the effective date of the statewide programmatic general permit authorized by s. 373.4144(1), shall be exempt from the changes to rule 62-340.450(3) described in this subsection, and shall be subject to the provisions of chapter 62-340, Florida Administrative Code, in effect prior to such change. Activities proposed within the boundaries of a valid declaratory statement issued pursuant to a petition submitted to either the department or the relevant water management district on or before the effective date of the statewide programmatic general permit authorized by s. 373.4144(1), or a revalidated jurisdictional determination prior to its expiration, shall continue thereafter to be exempt from the changes to rule 62-340.450(3) described in this subsection.

(c) A permit application under this part for dredging and filling or other activity, which is pending on or before the effective date of the statewide programmatic general permit authorized by s. 373.4144(1) shall be exempt from the changes to rule 62-340.450(3) described in this subsection.

(d) Activities associated with mining operations as defined by and subject to ss. 378.210-378.212 and 378.701-378.703 and

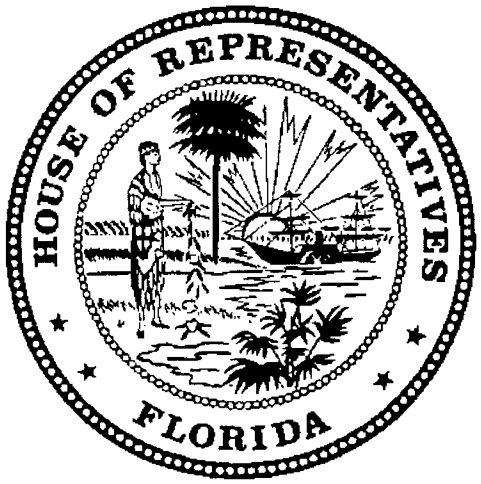
included in a conceptual reclamation plan or modification application submitted on or before the effective date of the statewide programmatic general permit authorized by s. 373.4144(1) shall be exempt from changes to rule 62-340.450(3) described in this subsection.

Renumber subsequent sections

========== T I T L E A M E N D M E N T ==========

Remove line(s) 16 through 19 and insert:

the Northwest Florida Water Management District; providing rulemaking authority; amending 373.4211, F.S.; revising provisions concerning the vegetative index used to delineate the landward extent of wetlands and surface waters; repealing language regarding facultative plants in Monroe County and the Key Largo portion of Dade County; providing grandfathering provisions; providing exemptions; providing effective dates.



Committee on Environmental Regulation

Wednesday, April 5, 2006
1:30 – 3:00 PM
212 Knott

Addendum C (04.05.06, 10:30 a.m.)

Allan G. Bense
Speaker

Mitch Needelman
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **1343**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Environmental Regulation Committee

Representative(s) Williams offered the following:

Substitute Amendment for Amendment (1) by Representative Williams (with title amendment)

Remove line(s) 136-219 and insert:

In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts are authorized to implement a voluntary statewide programmatic general permit for all dredge and fill activities impacting ten acres or less or wetlands or other surface waters, including navigable waters, subject to agreement with the United States Department of the Army Corps of Engineers in accordance with the following conditions:

(a) By seeking to use the statewide programmatic general permit authorized by this section, an applicant consents to the department or district applying the landward most delineation of wetlands or other surface waters applicable pursuant to this part or the regulations implementing s. 404 of the Clean Water Act, Pub. L. No. 92-500 as amended 33 USC § 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899. In the implementation

of the 1987 Corps of Engineers Wetlands Manual Technical Report (87-1), the department or district shall equate high organic matter in the surface horizon in accordance with the National Resource Conservation Service (NRCS) indications for hydric soils approved for use in Florida. The department shall be responsible for ensuring statewide coordination and consistency in the delineation of surface waters and wetlands pursuant to the statewide programmatic general permit authorized by this part, by providing training and guidance to the department and districts in the implementation of this permit.

(b) By seeking to use the statewide programmatic general permit authorized by this section an applicant consents to applicable substantive federal wetland regulatory criteria, which are not included pursuant to this part, but which are authorized by the regulation implementing s. 404 of the Clean Water Act, Pub. L. No. 92-500 as amended 33 USC § 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899 as required by the Corps of Engineers notwithstanding the provisions of s. 373.4145, F.S., and for the limited purposes of implementing the statewide programmatic general permit authorized by this section.

(c) The department is authorized to adopt rules and apply environmental resource permitting program criteria adopted pursuant to s. 373.414(9) to both waters of the State and isolated wetlands. Upon adoption of these rules, applicants in the Northwest Florida Water Management District can elect to pursue use of the statewide programmatic general permit authorized by this section.

Section 2. Subsection (19) of section 373.4211, Florida Statutes, is amended to read:

(19)(a) Rule 17-340.450(3) is amended by adding, after the species list, the following language:

"Within Monroe County and the Key Largo portion of Dade County only, the following species shall be listed as facultative: Alternanthera paronychioides, Byrsonima lucida, Ernodea littoralis, Guapira discolor, Marnilkara bahamensis, Pisonis rotundata, Pithecellobium keyensis, Pithecellobium unquis-cati, Randia aculeata, Reynosia septentrionalis, and Thrinax radiata."

(b) Pursuant to s. 373.421, and subject to the conditions described herein, the Legislature ratifies the changes to rule 62-340.450(3), Florida Administrative Code, approved on February 23, 2006, by the Environmental Regulation Commission which add slash pine (pinus elliotti) and gallberry (flex glabral) to the list of facultative plants. However, this ratification and the rule revision shall not become effective until 60 days after the date the statewide programmatic general permit authorized by s. 373.4144(1) becomes effective covering no less than five acres of wetland impact.

(c) Surface water and wetland delineations identified and approved by a permit issued under rules adopted pursuant to this part prior to the effective date of the statewide programmatic general permit authorized by s. 373.4144(1) shall remain valid until expiration of such permit, notwithstanding the changes to rule 62-340.450(3) described in this subsection. For purposes of this paragraph, the term "identified and approved" means:

1. The delineation was field-verified by the permitting agency and such verification was surveyed as part of the application review process for the permit; or

2. The delineation was field-verified by the permitting agency and approved by the permit.

Where surface water and wetland delineations were not identified and approved by the permit issued under rules adopted pursuant to this part, delineations within the geographical area to which such permit applies shall be determined pursuant to the rules applicable at the time the permit was issued, notwithstanding the changes to rule 62-340.450(3) described in this subsection. This paragraph shall also apply to any modification of the permit issued under rules adopted pursuant to this part, that does not constitute a substantial modification, within the geographical area to which the permit applies

(d) Any declaratory statement issued by the department under s. 403.914, 1984 Supplement to the Florida Statutes 1983, as amended, or pursuant to rules adopted thereunder, or by the department or a water management district under s. 373.421, in response to a petition filed on or before the effective date of the statewide programmatic general permit authorized by s. 373.4144(1), shall continue to be valid for the duration of such declaratory statement. Any such petition pending on or before the effective date of the statewide programmatic general permit authorized by s. 373.4144(1), shall be exempt from the changes to rule 62-340.450(3) described in this subsection, and shall be subject to the provisions of chapter 62-340, Florida Administrative Code, in effect prior to such change. Activities proposed within the boundaries of a valid declaratory statement issued pursuant to a petition submitted to either the department or the relevant water management district on or before the effective date of the statewide programmatic general permit authorized by s. 373.4144(1), or a revalidated jurisdictional determination prior to its expiration, shall continue thereafter to be exempt from the changes to rule 62-340.450(3) described in this subsection.

(e) A permit application under this part for dredging and filling or other activity, which is pending on or before the effective date of the statewide programmatic general permit authorized by s. 373.4144(1) shall be exempt from the changes to rule 62-340.450(3) described in this subsection.

(f) Activities associated with mining operations as defined by and subject to ss. 378.201-378.212 and 378.701-378.703 and included in a conceptual reclamation plan or modification application submitted on or before the effective date of the statewide programmatic general permit authorized by s. 373.4144(1) shall be exempt from changes to rule 62-340.450(3) described in this subsection.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 16-19 and insert:

the Northwest Florida Water Management District; providing rulemaking authority; amending 373.4211, F.S.; revising provisions concerning the vegetative index used to delineate the landward extent of wetlands and surface waters; providing grandfathering provisions; providing exemptions; providing effective dates.